

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

TIMOTHY S. THERRIEN,)	
an individual,)	
)	
Plaintiff,)	
)	
-vs-)	No. 06-CV-217-JHP
)	
TARGET CORPORATION,)	
a Minnesota corporation,)	VOLUME III
)	
Defendant.)	

TRANSCRIPT OF JURY TRIAL PROCEEDINGS

BEFORE THE HONORABLE JAMES H. PAYNE
UNITED STATES DISTRICT JUDGE

MAY 20, 2008

A P P E A R A N C E S

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REPORTED BY: **BRIAN P. NEIL, CSR-RPR, RMR, CRR**
United States Court Reporter

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1 Tuesday, May 20, 2008

2 * * * * *

3 THE COURT: Let the record reflect the
4 parties are present with counsel.

5 Anything to take up before I bring the jury
6 in for plaintiff?

7 MR. DEMURO: No, Your Honor.

8 THE COURT: For the defense?

9 MR. RICHARDS: No, Your Honor.

10 THE COURT: If you could just bring the
11 jury in.

12 *(The jury enters the courtroom)*

13 THE COURT: You may be seated. Let the
14 record reflect the jury's in the box, parties are
15 present.

16 You may call your next witness.

17 MR. DEMURO: Your Honor, may it please
18 the court, may I go in the hallway and get Mr. Pavey?

19 THE COURT: You may.

20 MR. DEMURO: Thank you, sir.

21 Your Honor, at this time the plaintiff calls
22 Mr. Stacie Pavey.

23 THE COURT: Mr. Pavey, raise your right
24 hand and be sworn, please.

25

1 **STACIE PAVEY,**
2 *after having been first duly sworn, says in reply to*
3 *the questions propounded as follows, to-wit:*

4 **DIRECT EXAMINATION**

5 **BY MR. DEMURO:**

6 Q. Good morning, Mr. Pavey.

7 A. Good morning.

8 Q. Please tell the jury your full name.

9 A. Stacie Keith Pavey.

10 Q. And, Mr. Pavey, where do you live?

11 A. Tulsa.

12 Q. How long have you lived in Tulsa?

13 A. Pretty much my whole life.

14 Q. Okay. And how old are you, sir?

15 A. Twenty-five.

16 Q. Now, let me get some preliminaries out of the
17 way.

18 You understand that you've had your
19 deposition taken in this case before?

20 A. Yes, sir.

21 Q. And at that deposition, Target's counsel
22 represented you?

23 A. Yes, sir.

24 Q. And he helped you prepare for that
25 deposition?

1 A. Yes, he did.

2 Q. And you met with Target's counsel in
3 preparation for your deposition?

4 A. I did.

5 Q. And do you understand, too, sir, that
6 Target's counsel is representing you for purposes of
7 this trial?

8 A. I do.

9 Q. And you've met with Target's counsel in
10 preparation for this trial?

11 A. I have.

12 Q. **XXXX XXXXXX, XX X XXX XXXX, XXX XXX XX XXXXXX**
13 **X XXXXXX XXXXXXXX; XXXXXXXX?**

14 A. **XXXXXXX.**

15 Q. **XXX XXXX XXXXXX XX XXXXXXXX XX XXXX?**

16 A. **XXXXXXX.**

17 Q. **XXXXX XXXXX X XXX XXXXX XXXX XXX XXXXXXXX?**

18 A. **XXX, XXX.**

19 Q. **XXX XXX XXXX XX XXXXXXX X XXXXXXX XX, X**
20 **XXXXXXX, XXXXXXXXXXX XXXXXX?**

21 A. **XXX.**

22 Q. **XXXX. XX XXXX XXXX XXXXXXX XXXXX XXXXX?**

23 A. **XXX, XXX.**

24 Q. All right. And that was just a few days
25 before you gave your deposition when you left?

1 A. Correct.

2 Q. Right. Now, as I understand it, sir, you did
3 graduate from high school in 2001?

4 A. I did.

5 Q. And you pursued some college at Tulsa
6 Community College?

7 A. Correct.

8 Q. But when we last visited as of January of
9 2008, you had not yet obtained a degree?

10 A. Correct.

11 Q. Is that still the case?

12 A. Yes, sir.

13 Q. Okay. Now, Mr. Pavey, at the time of this
14 stabbing, your position with Target was what was known
15 as an asset-protection specialist; right?

16 A. Correct.

17 Q. And an asset-protection specialist was
18 basically a plain-clothes asset-protection employee?

19 A. Correct.

20 Q. And your job was to detect, observe, follow,
21 and attempt to apprehend folks who were stealing from
22 Target?

23 A. Yes, sir.

24 Q. Now, there were other security positions at
25 Target when you were there; correct?

1 A. Correct.

2 Q. Including what's called a Target protection
3 specialist --

4 A. Yes.

5 Q. -- right?

6 And the Target protection specialists were
7 the individuals who actually wore uniforms?

8 A. That's correct.

9 Q. Like a Target uniform, khaki pants, khaki
10 shirt, little badge maybe?

11 A. I'm not sure what the colors of the uniform
12 were at the time, but yes.

13 Q. They were clearly identifiable --

14 A. Right. Correct.

15 Q. -- as a Target security person; right?

16 A. Yes.

17 Q. We may not remember the exact uniform, but
18 they were khaki uniforms, they looked like a security
19 guard?

20 A. Right.

21 Q. And their job usually was to be stationed
22 near the front of the store to help act as a
23 deterrent?

24 A. That's correct.

25 Q. A deterrent to those who might shoplift?

1 A. Correct.

2 Q. And their job also was to assist people like
3 you, the plain-clothes employees, to make
4 apprehensions; correct?

5 A. That's correct.

6 Q. Only people that were certified by Target to
7 make apprehensions could make apprehensions?

8 A. That's correct.

9 Q. And those folks were the people that were
10 certified as the plain-clothes people,
11 asset-protection specialists?

12 A. Correct.

13 Q. Like yourself?

14 A. Right.

15 Q. xxx xxxxxxxx xxxxxx, xxxxx xxxxx xx
16 xxxxxxxxxxxxxxxx xxxxx xx xx xxxx xxxx xxxxxxxxxxxxxxxx xxx
17 xxx xx xxxxxxxx xxxx xxxxxxxxxxxxxx; xxxxx?

18 A. That's correct.

19 Q. And typically the way you like to do it was
20 to have a uniformed guard positioned at the front of
21 the store --

22 MR. RICHARDS: Objection, Your Honor.

23 This is --

24 MR. DEMURO: Can I finish my question?

25 *(Bench conference outside the hearing of the jury)*

1 MR. RICHARDS: Your Honor, my objection
2 is going into the typically what he would do, that
3 they would typically like to have a Target protection
4 specialist standing outside the doors to assist is
5 getting into an area that the court has said is not
6 what this case is about. He's not talking about this
7 apprehension. He's talking about other methods to do
8 an apprehension in this case.

9 MR. DEMURO: This is all proper
10 foundation, getting into what happened in this
11 apprehension, all of it.

12 THE COURT: What's the question?

13 MR. DEMURO: The question will be: Do
14 you usually position a Target protection specialist in
15 the front of the store when you make an apprehension?

16 THE COURT: The objection's sustained.

17 MR. DEMURO: I need to make an offer of
18 proof on that.

19 THE COURT: Go ahead and make it.

20 MR. DEMURO: May I get my material?

21 THE COURT: You may.

22 MR. DEMURO: This whole issue goes to a
23 breach that occurred after the altercation took place
24 and fits within your order, which is they should have
25 had a second guard there afterwards.

1 THE COURT: Well, that wasn't the
2 question but --

3 MR. DEMURO: That's what it went to,
4 Your Honor.

5 MR. RICHARDS: Your Honor, after the
6 altercation was over, there was no -- what happened
7 didn't cause an injury to Mr. Therrien. The injury
8 occurred in the altercation.

9 MR. DEMURO: The whole theory is -- and
10 I'm working hard to try to fit your --

11 THE COURT: I want you to understand it
12 is very narrow and there's a reason that you have to
13 work hard.

14 MR. DEMURO: Well, I ought to be able to
15 have an opportunity -- it's narrow but it's not
16 closed. If it was closed, then we shouldn't even be
17 here, so it's narrow so I can get in there.

18 THE COURT: Okay. What's your question?

19 MR. DEMURO: My point is, that the issue
20 of whether or not there should have been a second
21 security guard there persisted during and after the
22 fight. If there was a second security guard there,
23 nobody would have got hurt. That's my theory and that
24 fits within your order.

25 THE COURT: The --

1 MR. RICHARDS: May I respond, Your
2 Honor?

3 THE COURT: You may.

4 MR. RICHARDS: What the plaintiff's
5 suggesting is that the altercation never would have
6 occurred had there been a second security guard there.
7 First of all, it's obviously speculation because there
8 wasn't and we can't know that that's true. The same
9 instance may have occurred if there was a second
10 security guard.

11 The court's order is that the duty to Target
12 only arose at the point that Mr. Therrien entered into
13 the altercation. The evidence is absolutely beyond
14 question that it was at that point that he was injured
15 and that at that point only Mr. Pavey was engaged in
16 apprehending the shoplifter. So whether there could
17 have or theoretically should have been a second
18 asset-protection employee present at the time, there
19 was not and it's not relevant under the court's order.

20 Whether there could or should have been
21 someone there after the fact is irrelevant because
22 Mr. Therrien was already injured at that point. It
23 couldn't have caused him injury that there wasn't
24 somebody there after the fact.

25 MR. DEMURO: If there was a second guard

1 there when Mr. Therrien entered the altercation, the
2 altercation would have been different and Mr. Therrien
3 wouldn't have been hurt.

4 THE COURT: Objection's sustained.

5 MR. DEMURO: My offer of proof, Your
6 Honor, is that this witness would testify that he
7 xxxxx xxxx -- xx xxxxx xxx xx xxxxxxxxxxx xx xxxx, xx
8 xxxxx xxxx xxxxxx xxx xxxx xxxxxx xxxxxxxxxxx
9 xxxxxxxxxxx xx xxxxxxxxxxx xxxxxx xx xxx xxxxx xx xxx
10 xxxxx xx xxxx xxx xx xxx xxxxxxxxxxxxxxx. xx xxxxxx xx
11 that because one wasn't on duty. This witness will
12 testify that that was his usual and preferred practice
13 because it was safer.

14 THE COURT: Okay.

15 *(Bench conference concluded)*

16 Q. *(BY MR. DEMURO)* Okay. Let's get back to it.

17 On the day of the stabbing, you were the only
18 asset-protection specialist in the store that was
19 solely dedicated to working the floor; correct?

20 A. Correct.

21 Q. And that's for the entire Super Target --

22 A. Yes, sir.

23 Q. -- right?

24 There was no other uniform guard on the
25 store; correct?

1 A. I don't recall.

2 Q. You don't recall one way or another?

3 A. If there was another uniform guard, I don't
4 remember.

5 Q. I want to get clear on this point.

6 Are you saying that --

7 MR. RICHARDS: Your Honor, let me
8 object. This is exactly what we talked about; this is
9 not relevant.

10 MR. DEMURO: The fact of whether or not
11 there was someone there to help him is not relevant?

12 MR. RICHARDS: It's not relevant to the
13 circumstances of this apprehension.

14 MR. DEMURO: And now it goes to
15 credibility because this witness said something
16 different before about whether or not there's --

17 THE COURT: I'll allow you to rephrase
18 the question and give counsel an opportunity to object
19 to your new question.

20 Q. (BY MR. DEMURO) Now, Mr. Pavey, you recall,
21 don't you, that there wasn't a Target protection
22 specialist, a uniform guy, working that day; correct?

23 MR. RICHARDS: I object to the
24 relevance, Your Honor.

25 THE COURT: Sustained.

1 MR. DEMURO: Again, Your Honor, it goes
2 to credibility.

3 THE COURT: I understand but it's
4 sustained.

5 MR. DEMURO: I need to make an offer of
6 proof.

7 THE COURT: You may.

8 *(Bench conference outside the hearing of the jury)*

9 MR. DEMURO: This witness would have
10 xxxxxxxxxxx, xx xxxxxxxxxxx xxx xxx xxxxxxxxxxx, "xxxxxx
11 xx xxxxx xxx x xxxxxx xxxxxxxxxxx xxxxxxxxxxx xx xxx
12 xxx xxx xxxxxxxxxxx, xxxx x xxxx, xxx xxxx, xxxx xxxx,
13 xxx xxxx, xxxx xxxxxxxxxxx xxx xxxxxxx xxx xxxx xxxxx xx
14 xxxx xxxx xx xxxxx x xxxx xx xx xxxxxx xxxx, xxx xxxx
15 xx. xxxxxx xx xxxxx xxxxxxxxxxx. xxx xx xxx xx x xxxx,
16 there wasn't a certified TPS working that day.

17 "QUESTION: And when there had been one
18 working with them, how would you relay the information
19 to them?

20 "By walkie-talkie.

21 "QUESTION: If there had been another
22 asset-prevention team member in the store at that
23 time, do you think you would have called for his or
24 her assistance?

25 "ANSWER: I would have."

1 Now it goes to credibility and credibility is
2 always an issue separate from the --

3 THE COURT: It's not in evidence. It's
4 not relevant.

5 *(Bench conference concluded)*

6 Q. (BY MR. DEMURO) Now, Mr. Pavey, you know
7 that all apprehensions that you make have a potential
8 for risk of harm, don't you?

9 A. Yes, sir.

10 Q. Every time that you know that you're going to
11 make a physical confrontation with a shoplifter, you
12 know there's a danger?

13 A. Correct.

14 Q. Because you're apprehending somebody who is
15 basically someone who you think is a thief?

16 A. Correct.

17 Q. And most thieves want to get away?

18 A. Correct.

19 Q. xxx, xxx xxx xxxxx xxxx xxxxxx xxxxx xx xxxxx
20 xxx xxxxxx xx xxxx xxxxx xxxxxxxxxxxxxxxx xx xxx-xxx xx
21 xxxxxxxx, xx xxxxxx xx xxxxxx x xxxxx xx xxxxxxxx;
22 xxxxxxxx?

23 A. Correct.

24 Q. Because you're aware that if there is a scene
25 that's created, if a confrontation erupts, that it can

1 be a risk to those that are involved; correct?

2 A. Correct.

3 Q. And it could potentially cause injury to
4 yourself?

5 A. Correct.

6 Q. And if an altercation occurs and a physical
7 confrontation erupts, it could potentially attract
8 guests to the area?

9 A. Correct.

10 Q. And it could potentially end up harming the
11 guests --

12 A. Correct.

13 Q. -- if an apprehension gets out of control?

14 A. Correct.

15 Q. xxx xxxxxx xxx xxx xxxxxx xxx xxxxxxxx xx xxx
16 x xxxxxxxx xxxxxxxxxxxxxx xs x xxxx xxxxxx; xxxxxxxx?

17 A. Correct.

18 Q. xxxx xx -- xxxx xx -- xxx xxxxxx xxxxxxxx xx
19 xxxxxxxx xxx xxxxxxxxxxxxxx xxxx xxx xxx xx xxx xxxxxxxx
20 xxxxxx; xxxxxxxx?

21 A. That's correct.

22 Q. And that's, again, because you know that
23 physical confrontations create a risk of harm to
24 guests?

25 A. Correct.

1 Q. You also know, don't you, sir, that sometimes
2 shoplifters carry weapons?

3 A. Correct.

4 Q. And sometimes shoplifters carry knives, for
5 example?

6 A. Correct.

7 Q. Sometimes shoplifters use knives to tear open
8 the packages that they're concealing?

9 A. Correct.

10 Q. And so it's foreseeable, is it not, that
11 shoplifters that you're trying to apprehend may be
12 carrying a knife?

13 MR. RICHARDS: I'll object to it as
14 calling for a legal conclusion.

15 THE COURT: Argument, Counsel?

16 MR. DEMURO: I'm just asking for his
17 view of whether it's foreseeable. I don't think
18 that's legal; that's a fact question.

19 THE COURT: Overruled. You may answer.

20 A. Could you repeat question?

21 Q. (BY MR. DEMURO) Sure. Given all we've just
22 said about shoplifters carrying weapons and
23 shoplifters resisting, it's foreseeable, isn't it,
24 that when you make an apprehension, a shoplifter who
25 may be carrying a knife may resist?

1 A. Correct.

2 Q. And that's why you got to be as careful as
3 possible to follow all the rules and guidelines there
4 are about safe apprehensions?

5 A. Correct.

6 Q. xxx xxx xx xxx xxxxx xxx xxxxxxxxxxx xxx xx
7 xxx xxxxxxxxxxx xx xxx xxxxx xxxxxxxxxxx xxxxx xx xxx
8 xxxxxxxxxxx xxxxxxxxxxx xx x xxx xxxxxx?

9 A. That's correct.

10 Q. xxx xxxxxxx xxxxxxxxxxx xx xxxxx xx xxxxx xx
11 xxx x xxxxxxxxxxx xxx xxxxxx xxxxx xxxxxx xxxxxxxxxxx
12 xxxxxxx; xxxxxx?

13 A. Correct.

14 Q. That's one of the things that ensures a safe
15 apprehension; right?

16 A. Correct.

17 Q. Because if you touch or grab somebody from
18 behind before you get in front of them and identify
19 yourself, that could cause a violent eruption?

20 A. Possibly.

21 Q. At least that's what you've been taught by
22 Target?

23 A. Correct.

24 Q. Do you have an exhibit --

25 MR. DEMURO: Does the witness have an

1 exhibit notebook, Ms. Wilson, a plaintiff's exhibit
2 notebook.

3 Q. (BY MR. DEMURO) Sir, is there a plaintiff's
4 exhibit notebook in front of you? Do you have a
5 plaintiff's exhibit notebook in front of you, sir?

6 A. Yes, sir.

7 Q. Could you please turn to Exhibit 63?

8 A. (Witness complies).

9 Q. Do you have that in front of you?

10 A. I believe so.

11 Q. These were documents that were produced by
12 Target as the part of the asset AP academy training
13 materials. Do you recognize those?

14 A. Yes, sir.

15 Q. Do you recognize those as being Target's
16 training materials, as it's been represented to us,
17 that existed at the time of this apprehension?

18 A. Well, I believe that the training I had was
19 similar.

20 Q. Okay.

21 A. This looks like a little bit newer version.

22 Q. Let's -- let's -- and I'll represent to you
23 again that these were documents produced by Target's
24 counsel in this case, represented to be the AP academy
25 that were in effect at the time that this stabbing

1 took place.

2 A. Okay.

3 Q. Do you have any reason to dispute that?

4 A. No.

5 Q. Could you turn to the 6th page of Exhibit 63,
6 which is the bottom of -- the page number's at the
7 bottom middle.

8 A. *(Witness complies)*.

9 Q. And this particular page is entitled:
10 "Apprehending the shoplifter, things not to do."

11 MR. RICHARDS: Your Honor, let me object
12 at this point. It's actually entitled: "Approaching
13 the shoplifter." And this all precedes -- these
14 documents precede the involvement of Mr. Therrien in
15 this altercation and under the court's ruling it's not
16 relevant. Therefore, I object to reference to them.

17 THE COURT: Counsel?

18 MR. DEMURO: Yeah, two things, Your
19 Honor.

20 This witness has already testified without
21 objection that grabbing somebody from behind can
22 create a risk of a violent confrontation. That's what
23 happened in this case and that's the point at which
24 Mr. Therrien became involved.

25 So this is merely an extension of the

1 evidence that's already been presented. The evidence
2 has been that Mr. Therrien didn't get involved until
3 he saw a fight.

4 *(Bench conference outside the hearing of the jury)*

5 THE COURT: It's my fault, not your
6 fault, but the speaking objections when we're talking
7 about issues that are at least arguably part of the
8 motion in limine are not appropriate, but I should
9 have stopped you quicker.

10 MR. RICHARDS: My point is simply this:
11 I cannot object constantly to Mr. DeMuro getting
12 outside the court's ruling without risking prejudicing
13 the jury against Target. So far I've given -- trying
14 to give some latitude on this to lay some kind of
15 predicate about how Mr. Pavey initiated this
16 apprehension because I think that's obviously some
17 background information that the jury needs to know.

18 But at this point, we're getting into
19 policies and procedures that are absolutely irrelevant
20 because they precede the point of Mr. Therrien's
21 involvement and it's outside the scope of what the
22 court said is admissible testimony.

23 I'm having a problem here with having to
24 object repeatedly to testimony that goes outside what
25 happened when Mr. Therrien got in this thing. It's

1 just putting me in a bad light with the jury.

2 MR. DEMURO: This testimony is exactly
3 the point in time when Mr. Therrien got involved.
4 Mr. Therrien turned around and saw the fight and ran
5 towards it. The point that the fight started is
6 exactly when he got involved. That's what this is
7 geared to do.

8 THE COURT: I don't think so.
9 Sustained.

10 MR. DEMURO: I would like to make an
11 offer of proof on that.

12 THE COURT: You may.

13 MR. DEMURO: This witness will testify
14 xxxx xxxxxx xxx x xxxxxx xxxxxxxx xx xxxxxx xx-x,
15 xxxx xx xxx xxx xx xxxxxxxx xxxxxxxxxxxx xxxx xxxx xxx
16 xxx xxx xxxxx xxx x xxxxxxxx xxxxxxxxxxxxxxxx, xxxxxxx
17 xxxxxxx xxxxx xxxxx x xxxxxxxxxxxx, xxxxxx xxxxxx xx xxxx xxx
18 xxxxxxxxxxxxxxx xxx xxxxxxx xxx xxxx xxxxx x xxxxxxx xx xxxx
19 xxxxx xxxxx xxx xxxxxx xxxxxxxxxxxxxxxx, xxxxx xx xxxxxx
20 happened in this case, and he's already testified to
21 that.

22 (Bench conference concluded)

23 Q. (BY MR. DEMURO) Mr. Pavey, would you agree
24 that everybody -- well, strike that.

25 Would you agree that when you were working in

1 loss prevention at Target, that you felt pressure to
2 make apprehensions?

3 MR. RICHARDS: I'm going to object to
4 the relevance.

5 THE COURT: Sustained.

6 MR. DEMURO: I would like to make an
7 offer of proof.

8 THE COURT: You may.

9 *(Bench conference outside the hearing of the jury)*

10 MR. DEMURO: This witness would testify
11 that he believed that Target had a quota system in
12 place for apprehensions at the time --

13 THE COURT: No. I don't know if you
14 didn't get the message, but I know you have real
15 strong evidence of what the training required, the
16 training manuals, and all those things, but in my
17 wisdom, or lack of wisdom, I've ruled that that's not
18 the appropriate evidence to come in.

19 The kickoff point is when in the -- in the
20 case that when there was an immediate event that
21 caused danger to Mr. Therrien, that event, not before
22 that. You're trying to establish that this is a
23 standard negligence case and it's not. I mean, that's
24 your view but that's not the court's view.

25 MR. DEMURO: I'm just trying --

1 THE COURT: Or you can make your --

2 MR. DEMURO: Let me respond to that.

3 THE COURT: No, I don't want you to
4 respond. I'm just trying to help you to see how I see
5 the case, but you can make your offer.

6 MR. DEMURO: Well, I object to what Your
7 Honor just said.

8 THE COURT: That's my rule.

9 MR. DEMURO: The evidence --

10 THE COURT: So that's why we're having
11 this frustration is, I've ruled one way and I'm trying
12 to keep you within that and you're trying to go back
13 as if I haven't ruled, and that's okay.

14 MR. DEMURO: What I'm trying to do now
15 is abide by Your Honor's rulings.

16 THE COURT: Okay. You haven't. You can
17 make your offer of proof.

18 MR. DEMURO: This witness will testify
19 that there's a quota system at Target that there's a
20 color-coded system -- red, yellow, and green -- that
21 they were under significant pressure to make
22 apprehensions based on that. It's called a
23 key-performance measure. They were reviewed in part
24 by their supervisors on the number of apprehensions
25 they made, and that at the time of this apprehension,

1 Mr. Pavey was low in his apprehensions and had been
2 criticized for not making enough apprehensions in the
3 review that preceded this apprehension, which is
4 relevant to the reason why he was so aggressive after
5 the point in time when the fight got started and after
6 the point in time Mr. Therrien got involved in the
7 fight.

8 That's why it's relevant pursuant to the
9 court's order.

10 THE COURT: Offer of proof is made.

11 MR. RICHARDS: Your Honor, I would say
12 on behalf of Target, we would dispute that that would
13 be the evidence. We obviously don't think it's
14 relevant, and at this point I'm going to move for a
15 mistrial on the basis that there have been repeated
16 interjections of evidence outside of what the court
17 has ordered is permissible in this case.

18 It's prejudicing the defendants because
19 obviously we are trying to try this case with a set of
20 not relevant evidence. I'm concerned that the jury is
21 becoming bias against Target simply because we're
22 repeatedly objecting to improper questions.

23 THE COURT: Okay. I'm going to overrule
24 your motion for mistrial but with this admonition.

25 Whether I'm right or whether I'm wrong, I'm

1 the judge and I'm required to set the rules and
2 standards by which we try this case. And it may be a
3 simplistic view of what the law is, but where the
4 plaintiff's case should be started and ending is
5 with -- at the very earliest with what did Target do
6 after the skirmish started.

7 I mean, that's the most liberal view, what
8 did Target do, if anything, after that, not before,
9 not what the policies were, not how many people that
10 came there and shoplifted before. I mean, I think the
11 law is very clear about that. When the incident
12 happened, what did Target do after the incident
13 started?

14 If you go -- if you -- and I think it can
15 even be refined that there's a question of
16 whether -- there might be a question as to whether the
17 plaintiff was in danger when the scuffle started. He
18 wasn't in the scuffle when it started as I understand
19 the facts.

20 MR. DEMURO: Your Honor, this witness --

21 THE COURT: Nothing that happened before
22 that is relevant.

23 MR. DEMURO: This witness just testified
24 that anytime there's a physical confrontation --

25 THE COURT: That has nothing --

1 "anytime" has nothing to do with this. This is what
2 did Target do in this instance. That's what I think
3 the law is and I think that's what evidence is
4 relevant.

5 MR. DEMURO: Well, I'd like to respond.
6 If he's objecting to my offer of proof, then I would
7 like a hearing --

8 THE COURT: He's already asked for a
9 mistrial, I've overruled it, and I've given you those
10 thoughts going forward.

11 MR. DEMURO: My point is, if he's going
12 to object to my offer of proof, I want the opportunity
13 to get it out through the witness outside the presence
14 of the jury.

15 MR. RICHARDS: It's based on deposition
16 testimony that he submitted in writing. There's no
17 reason to delay proceedings by having a hearing in
18 camera.

19 MR. DEMURO: You know what was testified
20 to. I told the judge exactly what was testified to.
21 If you're going to object to it, I got a right to put
22 it on.

23 THE COURT: I mean, my understanding --
24 he can speak for himself -- my understanding was the
25 truth of what you put on was not the issue, it's just

1 the fact that you were raising that issue and causing
2 him to have to object was prejudicing his client.

3 MR. DEMURO: Is that correct,
4 Mr. Richards?

5 MR. RICHARDS: That's the issue on the
6 question of mistrial. I would take issue with
7 Mr. DeMuro's offer of proof to the extent that he's
8 suggesting that Mr. Pavey testified -- that he
9 testified that he was under significant pressure
10 because of quotas. That was not his testimony, about
11 being under significant pressure. It may be an
12 interpretation of the situation but it's still not
13 relevant.

14 THE COURT: Now --

15 MR. DEMURO: I'll remove the word
16 "significant" to move things along. But the offer of
17 proof is that he felt he was under pressure to make
18 his quotas, that he had been criticized for the making
19 of apprehensions prior, and in his review previous to
20 this incident, I think there was a three-colored
21 system to track their apprehensions, and that they
22 didn't get credit if the guy got away.

23 MR. RICHARDS: You know, my suggestion
24 is, I'd be happy to submit the testimony in a
25 written -- in writing to the court, file it as the

1 testimony of Mr. Pavey on those issues. I think
2 that's the best evidence of what he said.

3 MR. DEMURO: I mean, you know the
4 deposition, Phil, that's what he testified to.

5 MR. RICHARDS: I don't think that he
6 said he was criticized.

7 MR. DEMURO: But the testimony is what
8 it is. I'll submit it in writing, file it with the
9 court.

10 THE COURT: Is that satisfactory with
11 plaintiff, to submit the deposition as part of the
12 offer of proof?

13 MR. DEMURO: Yes. And an exhibit.

14 THE COURT: When you say "exhibit," I
15 didn't understand what you meant.

16 MR. DEMURO: There's an exhibit, his
17 performance review evaluation, that makes that point
18 that's criticized --

19 THE COURT: What's the exhibit number?

20 MR. DEMURO: It's probably Exhibit 74,
21 Plaintiff's Exhibit 74.

22 THE COURT: And you're making that as
23 part of the offer of proof?

24 MR. DEMURO: Yes, sir.

25 THE COURT: Exhibit 74, which is what?

1 MR. DEMURO: Which is Mr. Pavey's
2 performance review evaluation, the one that was
3 immediately prior to this incident, the most recent
4 one.

5 THE COURT: And what does it reflect?

6 MR. DEMURO: It says, quote, you need to
7 increase your apprehensions, and that he had not been
8 meeting his quotas for apprehensions.

9 THE COURT: Do you have any doubt about
10 the --

11 MR. RICHARDS: It says what it says.

12 THE COURT: Okay. Seventy-four will be
13 part of the offer of proof and the deposition.

14 MR. DEMURO: I'll submit that at a break
15 or at the end of the day.

16 MR. RICHARDS: As far as I'm concerned,
17 you can do it after the trial is over. I'm not going
18 to object if it comes in after the trial.

19 THE COURT: My practice generally is
20 before we close is to call you forward and check with
21 the clerk to be sure if there's anything -- you can do
22 that either at the next break or at the close of the
23 trial.

24 *(Bench conference concluded)*

25 Q. (BY MR. DEMURO) Okay. Let's see if we can

1 reorient ourselves, Mr. Pavey.

2 xxxx xx xxx xxxx xxxxxxxxxxxx, xx xxxx xxxxxxxx
3 xxxxxx xxx xxxx xx xxxx xx xxxxxxxxxxxx xx xxx-xxx xx
4 xxxxxxxx. xx xxx xxxxxxx xxxx?

5 A. Yes, sir.

6 Q. And, again, the need to do that is to avoid
7 potential injuries to guests?

8 A. Correct.

9 Q. Because if an apprehension gets out of
10 control, guests can get attracted to the area and get
11 involved in the melee?

12 A. Possibly.

13 Q. Now, you've had a situation before this, have
14 you not, when a guest got involved in an
15 apprehension?

16 MR. RICHARDS: Object. The court's
17 ruled on this that situations before this are not
18 xxxxxxxx.

19 THE COURT: xxxxxxxx.

20 MR. DEMURO: x xxxxx xxxx xx xxxx xx
21 xxxxx xx xxxxx xx xxxx xx xxxxxxxxxxx xxxx xxx xxxxxxxxxxx
22 exhibit.

23 THE COURT: And what is that exhibit?

24 MR. DEMURO: Exhibit 72 -- and I stand
25 corrected -- Exhibit 71.

1 THE COURT: Exhibit 71 is your offer of
2 proof?

3 MR. DEMURO: And 72, Your Honor.

4 THE COURT: Any comment that counsel for
5 the defense would like to make in regard to that? I'm
6 trusting that you have the permission to approach the
7 bench, if you think appropriate.

8 MR. RICHARDS: I don't think it's
9 necessary, Your Honor. I have no objection to the
10 plaintiff submitting those documents as an offer of
11 proof.

12 THE COURT: Be accepted as an offer of
13 proof.

14 Next question.

15 Q. (BY MR. DEMURO) Mr. Pavey, could you get
16 fired for violating Target's policies and procedures?

17 A. Possibly.

18 Q. Was it against Target's policies and
19 procedures to ask for help of a customer to help you
20 subdue a criminal? Would that be against Target's
21 policies?

22 A. That would.

23 Q. Now, Mr. Pavey, don't you agree that this
24 apprehension that went bad would have been a lot safer
25 if there was a second Target security guard on the

1 scene?

2 MR. RICHARDS: Same objection. We've
3 just had --

4 THE COURT: Sustained.

5 Q. (BY MR. DEMURO) Let's talk about that day.
6 Do you recall on June 3rd what time you got
7 to work?

8 A. I don't recall exactly.

9 Q. Now, I recall that that day the only other
10 person in the store who had any loss-prevention
11 capabilities was Ms. Plonczynski. Correct?

12 A. I believe so.

13 Q. Okay. Do you need to be refreshed on that
14 point?

15 MR. RICHARDS: Judge, I object to the
16 relevancy at this point.

17 MR. DEMURO: Just background of how many
18 store security were in the store at the time.

19 THE COURT: Objection overruled. You
20 may answer.

21 Q. (BY MR. DEMURO) Do you remember anyone else
22 but you and Julie who were in the asset-protection
23 team being on duty that day?

24 A. I remember working with Julie, but I don't
25 recall if there were any Target protection specialists

1 off the top of my head, no. If you could enlighten
2 me.

3 Q. I'd be glad to.

4 MR. RICHARDS: Your Honor, if this is
5 refreshing recollection, perhaps letting him read it
6 himself would be better because I'm -- unless he can
7 be told what he's about to read.

8 MR. DEMURO: I'm going to refresh his
9 recollection with his deposition testimony on this
10 particular --

11 MR. RICHARDS: The same testimony that
12 Mr. DeMuro read at the bench conference a moment ago.
13 The court's already ruled it's inadmissible for any
14 purpose.

15 THE COURT: Is that the nature of the
16 evidence?

17 MR. DEMURO: Partially.

18 THE COURT: Sustained.

19 Q. (BY MR. DEMURO) Let's put it this way,
20 Mr. Pavey.

21 You don't recall any other security people on
22 duty at the time, do you?

23 A. No.

24 Q. Okay. As I understand it, that afternoon of
25 June 3rd, you initially identified a group of four

1 people in the music section of the store who grabbed
2 your -- who got your attention as potential
3 shoplifters?

4 A. I don't recall the exact number, but I would
5 say around four, give or take.

6 Q. All right. And at that time, you called
7 Ms. Plonczynski to come join you --

8 A. Correct.

9 Q. -- to help you watch these people?

10 A. Correct.

11 Q. And at some point when you and
12 Ms. Plonczynski were watching this group of people
13 that you suspected to be shoplifters, one of them, who
14 eventually is the stabber in this case, broke off from
15 the other three; is that right?

16 A. Correct.

17 Q. And then that person who broke off from the
18 other three came back into the music and entertainment
19 section with a cart?

20 A. Correct.

21 Q. And the cart had some merchandise on it?

22 A. Correct.

23 Q. Okay. Could you please turn to Exhibit 12?

24 Do you recognize what Plaintiff's Exhibit 12
25 is a photograph of?

1 A. It's very blurry but it looks like the
2 subject.

3 Q. Okay. You've seen a lot of photographs
4 from -- or images from Target security cameras,
5 haven't you, sir --

6 A. I've seen a few.

7 Q. -- over the course of your years working for
8 Target?

9 A. Correct.

10 Q. I mean, you've seen a bunch, haven't you?

11 A. Right.

12 Q. And you know that this is one of the Target
13 security camera's view outside -- pointed outside the
14 exit doors?

15 A. Correct.

16 Q. Okay. And you know this was a photo taken in
17 this case of the stabbing suspect when he entered the
18 store; correct?

19 A. That's correct.

20 Q. That's who it appears to be?

21 A. Right.

22 Q. And the time is 1:43:48 p.m. on June 3rd?

23 A. Yes, sir.

24 MR. DEMURO: Your Honor, at this time
25 I'd move Plaintiff's 12 into evidence.

1 MR. RICHARDS: I would object on the
2 basis of relevance, Your Honor. What we are concerned
3 with is the point at which the altercation --

4 THE COURT: Sustained.

5 MR. DEMURO: I offer Plaintiff's 12 as
6 an offer of proof.

7 THE COURT: Accepted as an offer of
8 proof.

9 Q. (BY MR. DEMURO) Turn to Plaintiff's Exhibit
10 14.

11 A. (Witness complies).

12 Q. Now, Exhibit 14 is a photograph of this
13 criminal who ended up stabbing you and Mr. Therrien
14 while he's pushing the cart in the music section;
15 right?

16 A. Yes, sir.

17 Q. And that photograph was an image taken from
18 Target's digital cameras that were working that day;
19 correct?

20 A. Correct.

21 Q. And that photograph was taken a few minutes
22 later at 1:56:02?

23 A. Correct.

24 Q. And that appears to be about the time that
25 you started to follow this shoplifter yourself from

1 your recollection; right?

2 A. I believe so, yes.

3 Q. About the time he picked up the merchandise,
4 put it in his cart, and started heading out of the
5 music section?

6 A. Correct.

7 MR. DEMURO: Your Honor, at this time I
8 move Plaintiff's 14.

9 MR. RICHARDS: I'd offer the same
10 objection, Your Honor.

11 THE COURT: Objection sustained.

12 MR. DEMURO: Your Honor, I offer
13 Plaintiff's 14 as an offer of proof relevant to
14 show --

15 THE COURT: Be accepted as an offer of
16 proof.

17 Q. (BY MR. DEMURO) At that time when you saw
18 the shoplifter in the music section pushing that cart,
19 did you suspect that he was a shoplifter at that time?

20 A. Yes, sir.

21 Q. Why?

22 A. The amount of merchandise that he had, his
23 demeanor.

24 Q. And what was his demeanor?

25 A. Appeared to be looking around, kind of going

1 in circles, selecting merchandise without really
2 paying attention to what he was selecting.

3 MR. DEMURO: Your Honor, may I approach
4 the well and set an exhibit up?

5 THE COURT: You may.

6 MR. DEMURO: Thank you.

7 THE COURT: Is this one that's admitted?

8 MR. DEMURO: It's one of Target's
9 demonstrative exhibits, sir. So the answer I guess
10 would be no.

11 THE COURT: So it's not an exhibit; it's
12 a demonstrative aid?

13 MR. DEMURO: It's a demonstrative aid.

14 THE COURT: It's not in evidence?

15 MR. DEMURO: That is correct, Your
16 Honor.

17 THE COURT: Okay.

18 Q. (BY MR. DEMURO) I'm going to hand you the
19 pointer here.

20 Now, the music department of the store is
21 located in the left-hand corner of the Target store;
22 correct?

23 A. Correct.

24 Q. And for the record sake, we are, as His Honor
25 pointed out, looking at a demonstrative aid that is a

1 graphic layout of the store?

2 A. Yes, sir.

3 Q. Is that right, the Super Target where this
4 took place?

5 A. Yes.

6 Q. Okay. Now, you first -- when you first broke
7 off from the other kids and started following the
8 shoplifter, he started weaving in and out in this
9 direction; right?

10 A. Yes, sir.

11 Q. And at that time, Ms. Plonczynski went to
12 follow the other three kids that you thought to be
13 suspicious at the time?

14 A. Correct.

15 Q. Those three kids turned out to be completely
16 innocent, doing nothing wrong; right?

17 A. As far as I know.

18 Q. I mean, they didn't get arrested or
19 apprehended, at some point along the process Target
20 determined they were not shoplifters as far as you
21 know?

22 A. As far as I know.

23 Q. Right. Now, as the shoplifter was coming
24 back here to automotive and sports and toys and games
25 and domestics and winding his way around the store, he

1 was weaving in and out taking evasive maneuvers;
2 correct?

3 A. Correct.

4 Q. You interpreted that, based on your
5 experience, as being somebody who really knew what
6 they were doing as far as being a thief; right?

7 A. Correct.

8 Q. This was a much more sophisticated shoplifter
9 than you encounter usually?

10 A. Correct.

11 Q. So during this weaving in and out of the
12 store -- excuse me -- in and out of the various
13 aisles, you also heard him ripping open packages?

14 A. Correct.

15 Q. Ripping open what you thought to be CDs
16 perhaps?

17 A. Yes.

18 Q. And, of course, that's a major indication to
19 you that this guy is trying to conceal merchandise --

20 A. Correct.

21 Q. -- correct?

22 So at that point -- around this point in the
23 store up here near sporting goods, you were certain
24 almost -- you were certain that he was trying to
25 shoplift?

1 A. Yes, sir.

2 Q. And you knew at that point in that corner of
3 the store, that you were going to try to apprehend
4 him; right?

5 A. Yes, sir.

6 Q. And you knew that the apprehension was going
7 to take place in the front entranceway of the store;
8 correct?

9 A. Not necessarily the one you pointed to. It
10 could have been either one.

11 Q. xxxx xxxxxx. xxx xxxx xxxx xxx xxxx xxxxxx xx
12 xxx xx xxxx xxxx xxxxxxxxxxxxxxx xxxxx xxx xxxxxxxx
13 xxxxxxxx xxx xxxxxxxxxxx xxxxx xxx xxxxx xx xxxx xxx
14 xxxxx xxxxxxxx xxx xx xxx xxxx xxxxxxxxxxx; xxxxx?

15 A. That was the plan.

16 Q. Okay. Now, you knew -- that was in your
17 mind, you knew you were going to follow him, however
18 long it took, follow him around the rest of the store,
19 until he tried to leave by one of the major
20 entrances?

21 MR. RICHARDS: Your Honor, at this point
22 I'll object as getting beyond background. This is not
23 relevant.

24 THE COURT: Sustained.

25 Q. (BY MR. DEMURO) How long a period of time do

1 you think it was between the time that you knew that
2 you were going to make an apprehension and the time
3 that you actually tried to make the apprehension?

4 MR. RICHARDS: Same objection.

5 THE COURT: Overruled. You may answer.

6 A. It seemed like a long time. I don't know.
7 It was probably around 15 minutes or so.

8 Q. (BY MR. DEMURO) Now, all that while, that 15
9 minutes or so -- and I understand that's an
10 estimate -- you were following the suspect through the
11 store and you knew that you were going to try to stop
12 him at one of these exits?

13 A. Correct.

14 Q. You did not, as I understand it, attempt to
15 call Ms. Plonczynski to have her help you?

16 A. Correct.

17 Q. You did not call any other Target security
18 personnel because there were none on duty; correct?

19 A. Correct.

20 Q. You didn't call the police during that 15
21 minutes even though they respond quickly to situations
22 like this; correct?

23 A. Not always.

24 Q. Did you call the police?

25 A. I did not call the police.

1 Q. Target had a good relationship with the
2 police, didn't they?

3 A. We did.

4 Q. They were here within minutes after --

5 MR. RICHARDS: Your Honor, I object to
6 the relevance.

7 THE COURT: Sustained.

8 Q. (BY MR. DEMURO) How long did it take the
9 police to get here after this incident?

10 A. As I recall, they were there within a few
11 minutes.

12 Q. So as you were following this criminal around
13 the store, you didn't make any of those calls, did
14 you?

15 A. No.

16 Q. Now, at some point towards the front of the
17 store, near the pharmacy section, the criminal, the
18 shoplifter, got rid of his cart?

19 A. Yes, sir.

20 Q. And he concealed -- had already concealed his
21 merchandise in what you believed to be either a bag of
22 some sort or in his pants directly?

23 A. I believe it was both.

24 Q. Right. And you thought that at that time he
25 was stealing a bunch of CDs that you had heard him

1 unwrapping throughout the store?

2 A. Correct.

3 Q. Okay. And your plan was that you were going
4 to crouch behind one of these aisles, one of these
5 checkout aisles, and let him walk towards the exit on
6 the grocery side; correct?

7 A. I wouldn't say that was my plan. I mean, I
8 did what I needed to do to remain unseen.

9 Q. Well, that's what you did?

10 A. That's what I did.

11 Q. You crouched behind -- as the suspect was
12 leaving the store, you crouched behind one of these
13 aisles --

14 A. I believe I did.

15 Q. -- like this?

16 Crouched down like this so that he could walk
17 by you and he wouldn't see you; right?

18 A. Correct.

19 Q. So that you could come up from behind him;
20 correct?

21 A. Correct.

22 Q. Okay. At that point when the shoplifter got
23 to the exit past this electronic-monitoring device,
24 you ran out from behind the cashier's lane that you
25 were crouching behind and you ran up behind him to

1 make contact with him; correct?

2 A. I'm not sure I waited that long to begin my
3 approach, but what you're saying is kind of
4 accurate.

5 Q. Well, I don't want to be kind of accurate.

6 A. I understand.

7 Q. I want to be real accurate.

8 You were crouching down behind a lane down
9 here; right?

10 A. Right.

11 Q. Waiting so that the shoplifter wouldn't see
12 you as he was walking towards the exit?

13 A. Right.

14 Q. And when he got to the exit, you sprung out
15 from behind where you were crouching and you ran to
16 grab the shoplifter?

17 A. Well, I don't recall specifically, but I
18 don't think I would have waited that long, again, to
19 start my approach.

20 Q. Now, let's see if we can be a little bit more
21 specific.

22 You were crouching behind the cashier --
23 right? -- and at some point, however much time it was,
24 you ran from where you were crouching to grab the
25 shoplifter from behind.

1 A. Either ran or walked very briskly.

2 Q. Okay. I'll take that. You ran or walked
3 very briskly from behind the shoplifter; correct?

4 A. Correct.

5 Q. And your attention was to put your arm on him
6 from behind to stop him --

7 A. No.

8 Q. -- right?

9 A. No.

10 Q. Isn't that what happened?

11 A. Kind of.

12 Q. Now, when you were running towards the
13 shoplifter, Mr. Pavey, did you have your walkie-talkie
14 in your hand?

15 A. I don't believe I had it in my hand.

16 Q. Did you have it anywhere on you?

17 A. Probably would have been clipped on the back
18 of my belt.

19 Q. Did you have anything in your hand, a weapon
20 or anything of any kind?

21 A. No.

22 Q. Anything at all in your hand?

23 A. Possibly. I would have either had my badge
24 in my hand or hanging around my neck; I don't recall
25 which.

1 Q. Okay.

2 MR. DEMURO: So, Ms. Wilson, please put
3 up Exhibit 15A and we'll go through this. Ms. Wilson,
4 do you have 15A up, please, up on the screen?

5 THE COURT: Is your screen on?

6 THE WITNESS: Yes, sir.

7 THE COURT: We had some trouble earlier.
8 You may proceed.

9 MR. DEMURO: Thank you, Your Honor.

10 Q. (BY MR. DEMURO) Okay. Now, as we scroll
11 through there, the second frame of Exhibit 15, you see
12 the shoplifter entering the frame; correct?

13 A. Correct.

14 Q. The third frame, you see that you have --
15 your leg first appears in the frame?

16 A. Correct.

17 Q. And we don't see your leg or any part of you
18 here, so that in one second your leg was out in front
19 here, out in front of him?

20 A. Right.

21 Q. And we can tell from the spread of your leg,
22 the gait of your leg, that you were moving pretty
23 fast?

24 A. Yes, sir.

25 Q. Looks like you were running; correct?

1 A. Yes, sir.

2 Q. Now, isn't it true that the first thing that
3 you did was you put your arm on the shoplifter's
4 shoulder?

5 A. Possibly his shoulder, upper arm.

6 Q. Okay. So the first thing you did is put your
7 arm on his upper shoulder or his arm; correct?

8 A. Right. As well as, you know, identified
9 myself.

10 Q. But at the time that you claim that you
11 identified yourself, you had already had a hold of
12 him; right?

13 A. I believe I would have done them
14 simultaneously.

15 Q. My question is, when you first identified
16 yourself, Mr. Pavey, to the shoplifter, you already
17 had a hold of his arm from behind; correct?

18 A. I don't know about from behind.

19 Q. Didn't you first grab him from behind? Isn't
20 that what you just said?

21 A. No, it's not what I said.

22 Q. Okay. When you came from behind him, what
23 did you do?

24 A. I went around him, attempted to get in front
25 of him, identified myself as Target security --

1 Q. Okay.

2 A. -- and I had my hand on his arm.

3 Q. What hand did you first put on his arm?

4 A. I don't recall which --

5 Q. Which one of your hands?

6 A. I don't recall which one.

7 Q. Right or left?

8 A. From the looks of the video, I would think
9 left, but I don't recall.

10 Q. All right. But that's the way the video
11 looks --

12 A. Right.

13 Q. -- right?

14 And you've got from this point to this point
15 all in one second?

16 A. Right.

17 Q. Right. Now, by the time that you first
18 identified him, you had already had a hold of his arm;
19 correct?

20 A. Like I said, I think I would have done it
21 simultaneously. I don't think I would grab somebody
22 and then decide to tell them who I am.

23 Q. Okay.

24 MR. DEMURO: Ms. Wilson, please bring up
25 Mr. Pavey's deposition.

1 Q. (BY MR. DEMURO) You remember taking your
2 deposition in this case?

3 A. I do.

4 Q. And we had an opportunity to visit in
5 Mr. Richards' office and ask questions under oath --

6 A. I remember.

7 Q. -- about this case?

8 And I went threw in some detail the
9 circumstances of the apprehension; do you remember
10 that?

11 A. I do.

12 Q. Okay. Now, if you turn to your deposition,
13 page 139 --

14 MR. RICHARDS: Your Honor, let me object
15 to displaying the testimony. Asking him about it is,
16 I think, fair impeachment, it's fair impeachment, but
17 it shouldn't be displayed because undoubtedly there's
18 more on that page other than the question and answer
19 we're about to go to.

20 MR. DEMURO: I'm kind of flabbergasted.
21 Of course it's proper to display impeachment material.
22 This is a witness -- this is a party --

23 THE COURT: Well, listen, listen,
24 listen. Counsel's concern is not the impeachment as
25 what's on the page. Is that your intention?

1 MR. DEMURO: No. I'm just going to
2 highlight --

3 THE COURT: No. I mean, is
4 your intention -- I mean, is everything on the page
5 impeachment or is there extraneous material there
6 perhaps? I haven't looked at it.

7 MR. DEMURO: I'm going to highlight -- I
8 can understand why counsel doesn't want this on --

9 THE COURT: No. Listen -- approach.

10 MR. DEMURO: But I'm going to highlight
11 the page.

12 *(Bench conference outside the hearing of the jury)*

13 THE COURT: Now, don't refer to what
14 counsel doesn't like or what he does like. I don't
15 want you arguing with each other in front of the jury.
16 If you got an argument, you have an open door to come
17 -- just ask my permission to come up here. When in
18 doubt, do that.

19 MR. DEMURO: Okay.

20 THE COURT: Okay.

21 MR. DEMURO: All I'm going to show him
22 is a question and answer.

23 THE COURT: I guess my questions is,
24 it's normal for me -- at least I'll say generally in
25 the practice I've observed over the years, the

1 deposition is used to refresh the words, not the -- I
2 don't know why it's necessary to put the page up.

3 My only concern, without knowing what the
4 answer's going to be, is whether there's anything else
5 on the page that could be distracting to the jury.

6 MR. DEMURO: There's nothing -- I'm
7 going to carefully blow up these two sections --

8 THE COURT: What is it?

9 MR. DEMURO: It's a question and answer
10 and they're all about the same question.

11 THE COURT: You're going to -- this is
12 impeachment?

13 MR. DEMURO: That's right. And
14 substantive evidence because he was a party opponent
15 when he made the statement. So it's substantive
16 evidence as well, it's Target's agent.

17 MR. RICHARDS: Your Honor, he's a
18 witness. He was not presented as a corporate
19 representative. This is not a --

20 THE COURT: 30(b)(6)?

21 MR. RICHARDS: No, sir.

22 MR. DEMURO: It doesn't matter. He was
23 an employee. He's making statements relevant to the
24 course and scope of his employment to things that came
25 out of his employment.

1 THE COURT: You can ask him questions,
2 but you can't use his deposition except to impeach
3 him. If you're going to impeach him, well, now tell
4 me what it is that you -- what has he said that's
5 inconsistent with his prior testimony?

6 MR. DEMURO: He said that he's not sure
7 whether he grabbed him. By the time he identified
8 him, he had already grabbed him.

9 MR. RICHARDS: That's not impeachment,
10 Your Honor. That's what he's being saying here.

11 MR. DEMURO: No. That's what he said
12 here. This is what I'm going to impeachment him on,
13 what he said on impeachment --

14 THE COURT: What does he say in the
15 deposition?

16 MR. DEMURO: He says he did have him
17 grabbed by the time he identified him.

18 MR. RICHARDS: Where is that?

19 MR. DEMURO: 139.

20 THE COURT: Let me see what you're
21 talking about. Well, I think that's -- I think that's
22 what he had in answer to your question.

23 MR. DEMURO: No.

24 THE COURT: Yeah, it is. That's how he
25 answered it. He said, I had a hold of him, I was

1 trying to get around in front of him when I identified
2 myself.

3 MR. DEMURO: Well, maybe I'm incorrect
4 then.

5 THE COURT: Okay.

6 *(Bench conference concluded)*

7 THE COURT: You may proceed.

8 Q. (BY MR. DEMURO) Mr. Pavey, isn't it true
9 that by the time you had first identified yourself to
10 the shoplifter, you had already had a hold of his arm
11 just to let him know that you had a hold of him?

12 A. I don't recall.

13 Q. All right. Please look at page 139 of your
14 deposition.

15 MR. DEMURO: Do you have it up yet,
16 Ms. Wilson?

17 MR. RICHARDS: Your Honor, again,
18 displaying the page I object to. If he wants to show
19 him -- or I'd be happy to let him borrow my copy to
20 show him.

21 MR. DEMURO: There's nothing improper
22 with showing the deposition if I --

23 THE COURT: Well, I think there is. The
24 specific question is what we're after, and you have a
25 deposition with more than one or two questions on the

1 page.

2 MR. DEMURO: Sure.

3 THE COURT: So at least from that
4 technical point of view, it's not proper. Whether
5 there's anything else that's objectionable on that
6 page, it's not been brought to my attention. So the
7 safest thing would be for him to look at the
8 deposition.

9 MR. DEMURO: All right, Your Honor. If
10 I can approach, I'll give him a copy.

11 THE COURT: You may.

12 Q. (BY MR. DEMURO) Look at page 139 of your
13 deposition down on line 22. Are you tracking me?

14 A. I see it, yes, sir.

15 Q. And I asked you:

16 "QUESTION: When you first identified him,
17 Mr. Pavey, did you already have -- did you already
18 have your arm here?" Meaning on him.

19 "ANSWER: Well, yeah. I didn't have -- I
20 don't, you know, squeeze it but just to let him know
21 I've got a hold of you."

22 Do you see that?

23 A. I see that.

24 Q. Does this refresh your recollection that at
25 the time that you first identified yourself to the

1 shoplifter, you already had a hold of his arm just to
2 let him know that when you identified yourself you had
3 a hold of him?

4 A. That's what I testified to.

5 Q. You don't want to change that today, do you?

6 A. No. I have no argument with that.

7 Q. Now, Mr. Pavey --

8 MR. DEMURO: Ms. Wilson, please put 15A
9 back up on --

10 Q. (BY MR. DEMURO) Now, after you grabbed his
11 arm when you identified him, he immediately started to
12 struggle with you, didn't he?

13 A. Yes, sir.

14 Q. He immediately tried to flee?

15 A. Yes, sir.

16 Q. But you didn't let him go, did you?

17 A. No.

18 Q. You tried as we see --

19 MR. DEMURO: Ms. Wilson, please click
20 through the frames a little bit slow.

21 Q. (BY MR. DEMURO) You tried here to resist him
22 even though he was trying to flee; correct?

23 A. Correct.

24 Q. The next frame, you tried again to resist him
25 by pulling -- it looks like you're pulling at his

1 shirt to try to pull him down?

2 A. No. I mean, we're at a second later here. I
3 mean, I believe that's just kind of a continuation of
4 the frame before that's --

5 Q. What are you trying to do here?

6 A. I'm trying to stop him from going out the
7 door.

8 Q. Okay. Are you trying to pull him down on the
9 ground?

10 A. No.

11 Q. Really? The next frame, what's happening
12 there, when we don't see him and you look like you're
13 bending down to the ground?

14 A. He may have fallen down.

15 Q. Right. Because you were trying to push him
16 down or he just happened to fall?

17 A. In the struggle, he probably fell down.

18 Q. Were you applying pressure to him, pushing
19 him down?

20 A. No.

21 Q. He just fell on his own?

22 A. Right.

23 Q. The next frame, he's getting back up, isn't
24 he?

25 A. Yes.

1 Q. And he's moving off the frame after that, and
2 we don't see you ever again on this video, do we?

3 A. No.

4 Q. Mr. Pavey, isn't it true, when he was
5 struggling to flee out of the store in this frame,
6 2:05:54, in your mind, you were going to try to put
7 handcuffs on him?

8 A. Correct.

9 Q. And in your mind, to do that you were going
10 to try to push him up against the wall?

11 A. Correct.

12 Q. But that didn't happen, did it?

13 A. No.

14 Q. So when you initially tried to stop him, you
15 couldn't initially stop him; right?

16 A. Right.

17 Q. And when you initially tried to restrain him
18 again, you couldn't restrain him, he got back up;
19 correct?

20 A. Well, I just have an issue with your using
21 the word "again." Like I said, I mean, it's a -- it
22 was a constant thing. There wasn't a let's try to
23 stop him, break off, try to stop him again, break off.
24 That's not how it happened.

25 Q. No. It's a fluid thing?

1 A. Right.

2 Q. A fight is a fluid thing?

3 A. I wouldn't call it a fight.

4 Q. You wouldn't call this a fight?

5 A. No.

6 Q. You wouldn't call a situation where somebody
7 stabbed you and another man a fight?

8 A. I would call it an altercation but there were
9 no punches thrown.

10 Q. Nobody through any punches that you saw?

11 A. No.

12 Q. Not even Mr. Therrien?

13 A. No.

14 Q. Interesting. Okay. I'll use your word,
15 "altercation."

16 The first part of the altercation you try to
17 stop him when he was standing up, stop him from
18 fleeing; right?

19 A. Correct.

20 Q. And he didn't.

21 MR. DEMURO: And, Ms. Wilson, if you
22 could please attempt to track me on the ones that I'm
23 going on for the jury.

24 Q. (BY MR. DEMURO) So when he was standing up
25 at 51, that didn't work, did it, didn't stop him?

1 A. No.

2 Q. Then he tried somehow to wrestle down and
3 wrestle away from you; right?

4 A. Right.

5 Q. And it looks like he got back up at some
6 point; right?

7 A. Correct.

8 Q. And so you weren't able to keep him down on
9 the ground -- correct? -- at that point?

10 A. Right.

11 Q. And then your thought was, you were going to
12 try to throw him into the wall that's over here on the
13 frame that we can't see?

14 THE COURT: Counsel, let's take a
15 recess.

16 Members of the jury, if you'll remember my
17 admonition not to discuss this matter among yourselves
18 or allow anyone else to discuss it with you. We'll be
19 in recess for about ten minutes.

20 *(The jury exits the courtroom)*

21 THE COURT: You may step down.

22 THE WITNESS: Thank you, sir.

23 THE COURT: If you'd step out in the
24 hall, please, sir, and wait until you're called.

25 *(Discussion held off the record)*

1 THE COURT: Let the record reflect the
2 jury has departed the courtroom. The witness has
3 departed the courtroom.

4 Counsel, I know that you -- I'm attempting to
5 give you some leeway, background leeway, but you
6 understand my ruling is that what you're demonstrating
7 to the jury, Mr. Therrien is not even there. Until
8 there's a threat to him, there's no duty on the part
9 of the Target. That's what I've ruled.

10 This preliminary buildup, I just don't see,
11 other than this broad term I've used, "background," is
12 going to be helpful to determining the truth as to
13 what the issues are in this case. What did Target do
14 after there was an immediate danger to your client,
15 after, not before, after, starting there.

16 MR. DEMURO: The first point is, he's
17 testified that there's an immediate danger anytime
18 you're trying to take down a criminal.

19 THE COURT: No. Immediate danger to
20 your client is the issue.

21 MR. DEMURO: That's the evidence, that
22 he knows that shoplifters carry weapons, including
23 knives, that they resist, and that anytime he makes an
24 altercation, it's a danger to guests. That's the
25 evidence.

1 THE COURT: That may be the evidence,
2 but that's not what's relevant under the law in
3 Oklahoma and in the Tenth Circuit.

4 MR. DEMURO: Now, respect to your -- to
5 which I obviously object.

6 But with respect to your questioning about
7 why I'm doing this, I'm at a loss to why you've
8 interrupted my direct examination because I'm only
9 talking about frames that are one or two seconds
10 before we see Mr. Therrien enter. I thought from the
11 prior rulings, that you said one or two seconds was
12 okay?

13 THE COURT: Well, at best, when
14 Mr. Therrien comes into the picture -- now, there's a
15 place where he comes into the picture; that would be
16 the place to start. Anything that happened before
17 that -- I mean, I think I've given you leeway to set
18 up what the background is, but you're going into the
19 takedown and the scuffle before, which there's no
20 immediate danger to your client in that period of
21 time.

22 MR. DEMURO: First of all, this frame is
23 a limited frame. It shows --

24 THE COURT: Let me tell you, I'm not
25 going to argue with you. Listen, listen.

1 MR. DEMURO: It shows only inside the
2 vestibule.

3 THE COURT: I'm not going to argue with
4 you anymore. I'm just trying to refresh your mind as
5 to what the in limine order directed.

6 MR. DEMURO: Well --

7 THE COURT: And when your client, if
8 ever, was in immediate danger, what, if anything, did
9 Target do inappropriately.

10 MR. DEMURO: I understand that's your
11 ruling. You also said you'd give me a couple seconds.
12 I'm here two seconds before --

13 THE COURT: I've given you -- here's --

14 MR. DEMURO: -- two or three seconds
15 before the fight.

16 THE COURT: Here's the purpose. You've
17 had all that I'm going to give you. I want to get on
18 with your case as it relates to your client and him
19 being in danger.

20 MR. DEMURO: I believe one of my last
21 questions was, did you see Mr. Therrien throw a punch?
22 That's squarely within your ruling. So I don't know
23 why --

24 THE COURT: Then if that's the case,
25 you've apparently skipped over some buildup.

1 But the point of having the recess is to
2 remind you of where this case -- I've given you more
3 than, I think, adequate latitude to build up to where
4 the case starts with this witness.

5 MR. DEMURO: Okay.

6 THE COURT: We'll be in recess for about
7 five more minutes.

8 *(Short break)*

9 THE COURT: Let me ask the witness to
10 return to the stand.

11 MR. DEMURO: May I go get the witness,
12 Your Honor?

13 THE COURT: You may. Sir, if you'll
14 take your seat in the witness stand, we'll proceed.

15 Q. (BY MR. DEMURO) Mr. Pavey, I'd like to
16 change topics for a moment and talk about the injuries
17 you suffered.

18 I understand you were stabbed in this
19 incident?

20 A. Yes, sir.

21 Q. In your -- was it left leg?

22 A. It was actually in the groin area on the left
23 side.

24 Q. Okay. And at the time it bled -- it bled a
25 lot, didn't it?

1 A. Yes, sir.

2 Q. As it turned out luckily, the stab wound
3 didn't hit any of the major arteries in that area, did
4 it?

5 A. Correct.

6 Q. How quickly were you released from the
7 hospital?

8 A. I believe I was released the next morning.

9 Q. Okay. What did the doctors do to sew you up?

10 A. As I recall, they -- I had some kind of drain
11 coming out of the wound. I forget the technical term
12 for it. I remember I had -- they had taken some kind
13 of camera or scope through my belly button and then
14 through another hole in my right abdomen. All three
15 were stitched up. I had the drain for about a week.

16 Q. Okay. Do you have any -- strike that.

17 You don't have any problems from that injury
18 today, do you?

19 A. Not really, no.

20 Q. Now, getting back to the incident in
21 question --

22 MR. DEMURO: Ms. Wilson, Exhibit 15.

23 Q. (BY MR. DEMURO) -- at the point immediately
24 before Mr. Therrien entered into the fray, you first
25 attempted to stop the shoplifter while he was standing

1 up; correct?

2 A. Correct.

3 Q. And then the shoplifter went down to the
4 ground in some fashion; correct?

5 A. Correct.

6 Q. But you couldn't keep him on the ground and
7 he started to get back up; correct?

8 A. Correct.

9 Q. And at that point, you were going to throw
10 him against -- try to throw him against the wall to
11 possibly put handcuffs on him?

12 A. Well, again, I wouldn't use the word "throw,"
13 but yes.

14 Q. You were going to place him gently against
15 the wall?

16 A. Well, I wasn't going to just smash his head
17 into the wall.

18 Q. Where were your handcuffs at the time?

19 A. Would have been on a -- in a pouch on my belt
20 on the back, back of my belt.

21 Q. And so your intention was to handcuff this
22 man?

23 A. Correct.

24 Q. Now, was it at that point that you observed
25 Mr. Therrien coming in; correct?

1 A. Correct.

2 Q. And you deny that Mr. Therrien -- strike
3 that.

4 You deny that you asked Mr. Therrien to help
5 you; correct?

6 A. Yes, sir.

7 Q. And you claim that as Mr. Therrien was coming
8 in, you told him to back away?

9 A. Yes, sir.

10 Q. You claim that you said that when he was
11 running towards the fight; correct?

12 A. As soon as I saw him run by me is when I told
13 him to back away.

14 Q. Now, when you saw Mr. Therrien run by you,
15 were you still holding onto the shoplifter?

16 A. Yes, sir.

17 Q. And what position were you in?

18 A. I believe we were up against -- you can't see
19 it in the frame there, but there's a wall --

20 Q. Right.

21 A. -- and we were up there against that wall.

22 Q. Against the left wall between -- that
23 separates the two sides of the exits and entryway?

24 A. Correct.

25 Q. And that's when you saw Mr. Therrien come

1 in?

2 A. Right.

3 Q. Now, at that point, did you let the
4 shoplifter go?

5 A. No.

6 Q. Now, you recall giving a statement -- strike
7 that.

8 Is it your testimony that before you tried to
9 get in front of the shoplifter, you showed him your
10 badge, your security badge?

11 A. It would had to have been after I got in
12 front of him, otherwise he wouldn't have been able to
13 see it.

14 Q. So is it your testimony that you showed him
15 your security badge in this altercation?

16 A. Like I said, I either would have -- I'm just
17 telling you what I would have -- either I would have
18 had it in my hand or I would have had it hanging
19 around my neck.

20 Q. Did you attempt to identify yourself with
21 your security badge?

22 A. Yes.

23 Q. Did you show it to him?

24 A. I identified myself as Target security.

25 Q. Did you show your badge to him?

1 A. I don't recall.

2 Q. Do you remember giving a statement in
3 this -- about this matter that your employer Target
4 would use to put in its database, a handwritten
5 statement?

6 A. I don't recall actually, you know, doing it
7 but I know that I did.

8 Q. Turn to Exhibit 55 which has already been
9 admitted into evidence.

10 A. *(Witness complies)*.

11 Q. Is 55 the statement that you made out for
12 Target's use as your description of the events?

13 A. Yes, sir.

14 Q. Okay. This is the statement that you handed
15 to your supervisor, is it not?

16 A. Yes, sir.

17 Q. That your supervisor would have used to input
18 into the Target database that tracks these types of
19 incidents?

20 A. I assume so.

21 Q. That's the CIRS database, C-I-R-S? You're
22 aware of that; correct?

23 A. Yes.

24 Q. And that is your handwriting and you signed
25 this?

1 A. Yes, sir.

2 Q. And you believed it to be an accurate
3 statement?

4 A. Yes, sir.

5 Q. Okay. Look at the -- well, strike that.

6 You agree with me that your statement, your
7 contention that you told Mr. Therrien to back away,
8 that's an important fact, isn't it?

9 A. Yes, sir.

10 Q. Because it's important to Target to show
11 that -- allegedly show that Mr. Therrien was being
12 told to stay away and he allegedly came in any way;
13 right?

14 A. Correct.

15 Q. It's important. Now, if we look at your
16 statement and go to the second page --

17 MR. DEMURO: Ms. Wilson, if you could
18 blow up this portion.

19 Q. (BY MR. DEMURO) Now, beginning with this
20 sentence right here --

21 MR. DEMURO: Is there any way,
22 Ms. Wilson, you can highlight this section? Go all
23 the way down, please, Ms. Wilson.

24 Q. (BY MR. DEMURO) Now, correct me if I'm
25 wrong. I'm going to read from your statement.

1 "I approached the subject, identified myself
2 both verbally and by badge as Target security, and
3 attempted to peacefully escort him to the security
4 office."

5 You wrote that; correct?

6 A. Correct.

7 Q. "The subject, however, tried to flee so I
8 placed him against the wall in an attempt to handcuff
9 him. At the time, a guest later identified as Tim
10 Therrien, decided to provide unsolicited assistance
11 and grabbed the suspect's left arm as I held his
12 right."

13 Do you see that?

14 A. I see that.

15 Q. Now, tell me, sir, where in here in these
16 frames were you identifying yourself by badge as you
17 stated in this statement that you gave to your
18 employer.

19 A. When I say I identified myself, that doesn't
20 necessarily mean that I took the badge in my hand and
21 put it in their face. Like I said, I either would
22 have had it my hand or I would have had it hanging
23 right here on my chest.

24 Q. So you didn't identify -- as you state here,
25 you did not identify yourself by badge to this

1 shoplifter, did you?

2 A. Well, I had my badge hanging right there
3 where the shoplifter can see it.

4 Q. And that's what you meant to convey here?

5 A. Correct.

6 Q. That your badge was hanging down?

7 A. Right.

8 Q. And that identified you?

9 A. Yeah.

10 Q. You didn't put it up in his face like this?

11 A. No.

12 Q. Because you couldn't because things were
13 moving too fast; right?

14 A. Correct.

15 Q. Now, isn't it important -- isn't it true that
16 that's the same language you use in all your reports,
17 "I approached the subject, identified myself, both
18 verbally and by badge," because that's what Target
19 requires you to put off to check-off you've done the
20 right things? Do you use that language, "identified
21 myself by badge"?

22 A. Yes.

23 Q. Even though in this case you didn't?

24 A. Well, I disagree. I believe I did.

25 Q. Just by letting it hang there?

1 A. Right. Because usually I keep it hidden.

2 Q. And, of course, we can't see the badge in
3 these pictures; correct?

4 A. Correct.

5 Q. Now, you also described this as, "I
6 approached the shoplifter and attempted to peacefully
7 escort him to the security office." That's your
8 description of this event?

9 A. Yes. That was my intent.

10 Q. Further down in your statement, you say that
11 as you attempted to put the subject in a prone
12 position, "he was able to reach into his shorts, which
13 I believe to be his left hand, and produced a knife."

14 Do you see that?

15 A. Yes, sir.

16 Q. Now, you also say that Mr. Therrien was
17 holding his left arm and you were holding his right
18 arm; correct?

19 A. Right.

20 Q. And you were working together to try to put
21 him in a prone position?

22 A. Well, I wouldn't exactly call it "working
23 together."

24 Q. Well, did you say, "Mr. Therrien decided to
25 provide unsolicited assistance"?

1 A. I did say that.

2 Q. Okay. And you were grabbing his right arm,
3 he was grabbing the left, and you were both trying to
4 put him on the ground; correct?

5 A. I'm not sure what Mr. Therrien was trying to
6 do. I had a hold of his -- one of his arms.

7 Q. Now, do you also say here, sir -- prone
8 position, that means you were trying -- that means on
9 the ground; right?

10 A. No.

11 Q. I'm sorry?

12 A. No, it does not.

13 Q. What did you mean -- what do you mean by
14 "prone position"?

15 A. Well, what I was attempting to do was kind of
16 get him bent over and get his arm out to kind of
17 immobilize his feet so he couldn't, you know, really
18 do anything with them.

19 Q. Now, you were trying to do that with
20 Mr. Therrien grabbing one arm and you grabbing the
21 other?

22 A. That's what I was trying to do from the
23 beginning.

24 Q. That's not what I'm focusing on. I'm
25 focusing on the point in time when Mr. Therrien is

1 with you in the struggle, okay?

2 At that point he had one arm, you had the
3 other, and you were both trying to put him in a prone
4 position?

5 A. Like I said, I don't presume to know what
6 Mr. Therrien was attempting to do.

7 Q. Really? Let's look at what you said in your
8 statement to Target. As we attempted to put the
9 subject in a prone position, he was able to do such
10 and such.

11 So when you wrote this, you wrote it as "we,"
12 meaning you and Mr. Therrien; correct? That's who
13 you're referring to when you say "we"?

14 A. Correct.

15 Q. Right. And that's who you were referring to
16 when you say, "we attempted to put him in a prone
17 position"?

18 A. Correct.

19 Q. Now, this statement was made on June 6th,
20 '05, and you had been out of the hospital for a couple
21 of days; correct?

22 A. Yes, sir.

23 Q. And the incident had been a couple of days
24 old at that point, three days old?

25 A. Yes, sir.

1 Q. Now, nowhere in this statement that you gave
2 to your employer, do you use the words you told
3 Mr. Pavey -- Mr. Therrien to back off, did you?

4 A. No, sir.

5 Q. Even though that's a very, very important
6 point, a very important fact, nowhere in this
7 statement do you say you advised Mr. Therrien to back
8 off, did you?

9 A. Right.

10 Q. Now, you also made another statement to the
11 police the day that the incident occurred, didn't you?

12 A. I believe so.

13 MR. DEMURO: Turn to Exhibit 54,
14 Ms. Wilson, which also has been entered in evidence.

15 Q. (BY MR. DEMURO) Do you have Exhibit 54 in
16 front of you?

17 A. Yes, sir.

18 MR. DEMURO: Now, Ms. Wilson, could you
19 blow up the second paragraph?

20 Q. (BY MR. DEMURO) And before --

21 MR. DEMURO: I'm sorry, Ms. Wilson.
22 Back out and blow up his signature at the bottom.

23 Q. (BY MR. DEMURO) That's your signature at the
24 bottom; correct?

25 A. Yes, sir.

1 Q. Now, this was a report that was taken by a
2 police officer, it looks like an officer named
3 "Moore," taking down what you said; correct?

4 A. Kind of.

5 MR. DEMURO: Put it back up again,
6 Ms. Wilson.

7 Q. (BY MR. DEMURO) Well, if you notice, it says
8 that this statement was dictated to the officer at my
9 request and then you signed it?

10 A. Correct.

11 Q. Okay. So this is something you signed;
12 right?

13 A. Right.

14 Q. Okay. Now, if we look at the second
15 paragraph, the officer writes of what you told him.
16 "The BM" -- referring to black male -- "refused to
17 come back in the store so I grabbed him and we began
18 to wrestle. A customer helped me try and subdue the
19 black male, but he pulled out a knife and stabbed both
20 of us so we let him go." It goes on to describe the
21 knife.

22 That's a copy of the statement that you
23 signed that the police made; correct?

24 A. Correct.

25 Q. All right. Now, nowhere in this statement

1 does it reflect or say that you told the police that
2 you told Mr. Therrien to back off in this statement;
3 right?

4 A. Correct.

5 Q. And this was the statement -- the first
6 statement that was made after the incident, this was
7 June 3, 2005, when the police officer took your
8 statement down; correct?

9 A. Correct. And I don't know if it was the
10 first but it was that date.

11 Q. Did you give any other statements to anybody
12 other than the police and your handwritten statement
13 in Exhibit 55?

14 A. I don't recall. I don't know.

15 Q. Did you talk to, for example, Target's
16 investigator that took the statements from
17 Ms. Plonczynski and Ms. Kreps and Mr. Therrien?
18 Wouldn't they have interviewed you as well, sir?

19 A. You know, I don't remember exactly who I
20 talked to; some people from Target. I don't remember
21 who they were.

22 Q. Didn't you take a tape-recorded statement,
23 sir, that was recorded by Target's investigative team?

24 A. I don't recall.

25 Q. Now, Mr. Pavey, you understood at that time

1 that if you actually did -- if you had asked
2 Mr. Therrien for his help, that was something that you
3 could have been fired for; correct?

4 A. Yes, sir.

5 MR. DEMURO: No further questions, Your
6 Honor?

7 THE COURT: You may cross-examine.

8 MR. RICHARDS: Thank you, Your Honor.
9 Could you please bring up 51, 2:05:51?

10 **CROSS-EXAMINATION**

11 **BY MR. RICHARDS:**

12 Q. Mr. Pavey, as I understand your testimony,
13 this is the point at which you first had contact with
14 the shoplifter; is that correct?

15 A. Yes, sir.

16 Q. All right. Now, was there any question in
17 your mind that this man was, in fact, stealing from
18 Target?

19 A. No.

20 Q. And, in fact, ultimately, although he
21 escaped, there was evidence left, that being the bag
22 and the CDs, that he was trying to carry out;
23 correct?

24 A. Yes, sir.

25 Q. Now, sir, tell me -- and perhaps we can go

1 back a frame to 2:05:50.

2 As you're approaching that exit, what is that
3 white thing that's by your leg there sticking up from
4 the floor?

5 A. Are you referring to the EAS tower?

6 Q. Yes, I am. Let's see if I can borrow the
7 pointer.

8 Yes. That little thing, is that the EAS
9 tower?

10 A. I can't see what you're pointing at but --

11 THE COURT: The witness, you can step up
12 and look at --

13 Q. (BY MR. RICHARDS) I think that is what I'm
14 talking about.

15 A. This?

16 Q. Yes, sir.

17 A. Yes, that's what that is.

18 Q. And what is that tower?

19 A. It's part of our electronic article
20 surveillance system. Basically, it's kind of a
21 magnetic security system. It beeps whenever a sticker
22 that's not been demagnetized that's placed on
23 high-value merchandise or high-theft merchandise goes
24 out the door.

25 Q. All right. And then just past that are the

1 doors that we're looking at, the first set of exit
2 doors?

3 A. Yes, sir.

4 MR. RICHARDS: And could you bring up,
5 please, Exhibit 13?

6 Q. (BY MR. RICHARDS) And are we looking here at
7 the first set of exit doors with that EAS tower just
8 in front of it?

9 A. Yes.

10 Q. All right, sir. Now, as --

11 MR. RICHARDS: I'm sorry. If we could
12 now go back to 50.

13 Q. (BY MR. RICHARDS) As you're passing that EAS
14 tower, am I correct that you're also passing the
15 shoplifter?

16 A. Yes, sir. Attempting to.

17 Q. All right, sir. And as we go to 51, tell me
18 what's happening here.

19 A. Well, that's the point at which I identified
20 myself.

21 Q. And what did you say exactly?

22 A. "I'm Target security. I need you to come
23 back inside." It seemed like, you know, the second I
24 got in front of him, he was -- he's trying to flee.

25 Q. All right. Now, tell me about that.

1 Were you able to get the words out before he
2 responded?

3 A. I believe -- like I said, as soon as I got in
4 front of him, I believe he knew what was about to
5 happen, as far as, you know, he was -- that I knew
6 what he was doing and I was going to try to apprehend
7 him.

8 Q. All right, sir. And what did he do when he
9 responded?

10 A. He attempted to break for the door.

11 Q. All right. And how did he do that? Just
12 kind of rush forward?

13 A. Right.

14 Q. What did you do?

15 A. I attempted to stop him, you know. I
16 attempted to gain control of his hands.

17 Q. And how physically were you attempting to
18 stop him from going to the door?

19 A. Well, like I said, I was -- I was in front of
20 him, just trying to, like I said, you know, maintain
21 control of his hands. I was trying to get him
22 up -- up against a wall. You know, I believe his
23 momentum, you know, took him down to the ground.

24 Q. When he appears to be tripping or going down
25 later?

1 A. Right.

2 Q. In this frame, you can see that your right
3 arm appears to be sort of out in front of him; is that
4 correct?

5 A. Yes, sir.

6 Q. And what were you doing with your arm there?

7 A. I believe I was trying to get him turned
8 around so I could get back behind him and get control
9 of his hands.

10 Q. Were you trying to position yourself anywhere
11 in relation to the exit doors?

12 A. I was trying to be between him and the exit
13 doors.

14 Q. And why was that?

15 A. Because he was attempting to flee and I
16 wanted him to come back inside with me.

17 Q. And how large a fellow was this that you were
18 trying to restrain?

19 A. Very medium, average. I mean, I
20 couldn't -- I mean, probably 5-8, 5-10.

21 Q. And do you have any estimate of what he
22 weighed?

23 A. Maybe 140, 150.

24 Q. All right. So relatively slight.

25 What was your size and weight at that time,

1 height and weight?

2 A. 6-3, about 170, 175.

3 Q. All right, sir. Now, as we go through the
4 next couple of frames to 51, 52 -- and this is where
5 you think he may have kind of tripped?

6 A. Yes, sir.

7 Q. -- and then 53 and 54. In looking at 54,
8 sir, it's a little bit hard to see but down right
9 where your neck is --

10 MR. RICHARDS: Oh, thanks. I didn't
11 know you could do that.

12 Q. (BY MR. RICHARDS) -- down right where your
13 neck is, it looks like there's a black ribbon or
14 something around your neck. What is that?

15 A. That's the badge we use to identify
16 ourselves. Actually, I think you can see it on the
17 frame before --

18 Q. Can you?

19 A. -- kind of flying in the breeze.

20 Q. Let's go back to 53 and see if we can see
21 that.

22 A. Yeah. Right there in front of my face.

23 Q. Oh, so that spot is your badge?

24 A. Yes, sir. I believe it is.

25 Q. All right. And it's obviously on the outside

1 of your shirt, isn't it?

2 A. Yes, sir.

3 Q. Okay. Now, in frame 54, if we could, and
4 then -- I'm sorry. As we are going through this, now
5 we've looked at approximately three seconds now from
6 the point that you initiated this apprehension until
7 now, and I think this is the last frame that we can
8 actually see you in.

9 Tell me what's happening here. What are you
10 doing?

11 A. I think he may have fallen down at that point
12 and I would have been trying to get him back up and,
13 you know, towards the wall.

14 Q. And now in 55, we see Mr. Therrien coming
15 into the frame; is that correct?

16 A. Yeah. I believe those are the shorts he had
17 on that day.

18 Q. And 56, Mr. Therrien is coming through the
19 door; correct?

20 A. Correct.

21 Q. Now, sir, up to this point from where you
22 initiated the apprehension at 2:05:51 until
23 Mr. Therrien enters the exit vestibule at 2:05:56, was
24 there anyone in that exit vestibule other than you and
25 the shoplifter?

1 A. I don't believe so, sir.

2 Q. At any point up to this moment when
3 Mr. Therrien runs into the exit vestibule, had you
4 ever punched or struck the shoplifter?

5 A. No, sir.

6 Q. Did you ever kick him?

7 A. No.

8 Q. Did you ever bite him?

9 A. No.

10 Q. Did you ever get him in a choke-hold?

11 A. No.

12 Q. Did you do anything other than try to hold on
13 to him and keep him from going out the door?

14 A. No, sir.

15 Q. Was the shoplifter trying to do anything
16 other than get past you to get out the door?

17 A. No, sir.

18 Q. Had you seen a knife?

19 A. No, sir.

20 Q. All right. Did the shoplifter have a knife
21 pulled at that point?

22 A. No, sir.

23 Q. All right. When Mr. Therrien came into the
24 exit vestibule, you said in your statement that
25 Mr. DeMuro referred to, Plaintiff's Exhibit 55, that

1 "he decided to provide unsolicited assistance."

2 Now, by that, do you mean that you didn't ask
3 him for help?

4 A. Correct.

5 Q. All right. So if Mr. Therrien testified
6 yesterday that he ran into the exit vestibule and
7 stood for a moment to kind of take in the situation
8 and see who was who and you said, "Help me, help me,"
9 that would be incorrect?

10 A. Correct.

11 Q. And likewise, if his daughter testified
12 yesterday that in the hospital, in the emergency
13 department, on the day of this incident, that
14 Mr. Therrien told her that he had been standing at the
15 checkout lane and heard somebody -- heard you as the
16 security officer yell for help, that would be
17 incorrect?

18 A. Yes, sir.

19 Q. All right. Did you ever ask Mr. Therrien for
20 help?

21 A. No, sir.

22 Q. Did you speak to Mr. Therrien?

23 A. Other than telling him to back away, no.

24 Q. All right. And what precisely did you tell
25 him?

1 A. I told him to back off.

2 Q. When did you tell him that?

3 A. As soon as I saw him fly by me.

4 Q. All right. And when he flew by you, that was
5 when you were in the exit vestibule?

6 A. Yes, sir.

7 Q. And where did he go at that point?

8 A. He attempted to grab -- I had a hold of one
9 arm of the subject and he grabbed the other arm.

10 Q. And it seems from your statement, the
11 handwritten statement, Plaintiff's Exhibit 55, that he
12 grabbed the left arm of the shoplifter. Is that your
13 recollection?

14 A. Correct.

15 Q. All right. And then what happened when
16 Mr. Therrien grabbed the shoplifter's left arm?

17 A. I remember feeling as if I had been
18 punched.

19 Q. Was that immediately after he grabbed the
20 man's arm?

21 A. Yes.

22 Q. And where did you feel like you had been
23 punched?

24 A. In the groin area.

25 Q. Is that the area where -- the place where you

1 were ultimately determined to have been stabbed?

2 A. Yes, sir.

3 Q. And what happened when you felt that punch or
4 that stab?

5 A. I guess I was shocked. I guess I just kind
6 of stumbled back. I remember yelling at Mr. Therrien
7 to let him go, let him go, you know, that he's got a
8 knife.

9 Q. And were you able to see when he pulled the
10 knife out?

11 A. No.

12 Q. Now, you had his right arm; is that correct?

13 A. Yes, sir.

14 Q. Did he ever get his right arm inside his
15 pockets or his pants to get a knife?

16 A. I really don't -- don't know.

17 Q. In fact, in your statement that was
18 Plaintiff's Exhibit 55, you said he was able to reach
19 into his shorts with what I believe was his left hand
20 and produced a large knife.

21 Was that the one Mr. Therrien was holding on
22 to?

23 A. Yes, sir.

24 Q. All right. And what happened after you were
25 stabbed and fell back?

1 A. I remember telling Mr. Therrien to let him
2 go, you know, that he has a knife. I remember
3 Mr. Therrien having him in kind of a bear hug. I
4 remember seeing Mr. Therrien be stabbed.

5 Q. Now, tell me, a bear hug around where?

6 A. Kind of around -- I want to say right around
7 his -- kind of his shoulders. I mean, he was just
8 kind of holding him, you know, holding him there.

9 Q. Was he holding him in such a way that the
10 shoplifter couldn't move his arms or his hands?

11 A. No.

12 Q. Was the shoplifter able to move his arms
13 around?

14 A. Yes.

15 Q. And what did the shoplifter do?

16 A. He appeared to be stabbing Mr. Therrien.

17 Q. All right. So this is after you've been
18 stabbed, Mr. Therrien gets him in some kind of a bear
19 hug around his shoulders and he's stabbing
20 Mr. Therrien?

21 A. Correct.

22 Q. And were you able to see where he was
23 stabbing Mr. Therrien?

24 A. I remember one in particular. It seemed like
25 it was -- I don't recall which side but it was here on

1 either side. I remember seeing that happen. And
2 I -- I mean, again, I'm not sure if Mr. Therrien -- I
3 mean, in the adrenalin of the moment, I'm not sure if
4 he realized that that was -- that he had been stabbed,
5 you know, at least that badly.

6 Q. And what happened after you saw the
7 shoplifter -- and was he getting his arm around behind
8 him to stab Mr. Therrien?

9 A. Yes, sir.

10 Q. All right. What happened after he reached
11 around behind him and stabbed Mr. Therrien?

12 A. I just remember Mr. Therrien finally did
13 comply and let go of him and he bolted straight for
14 the door.

15 Q. When Mr. Therrien let the shoplifter go, he
16 ran straight out the door?

17 A. Yes, sir.

18 Q. Did he stop and say anything to Mr. Therrien?

19 A. No, sir.

20 Q. Did he say anything to you?

21 A. No. Not a word.

22 Q. Did you ever hear the shoplifter say a single
23 word during this entire incident?

24 A. No.

25 Q. Now, did you ever speak to the shoplifter

1 during this incident?

2 A. Other than identifying myself, no. I may
3 have said, you know, "stop resisting" or something
4 along those lines.

5 Q. Would that be something you would typically
6 say as a --

7 A. If they were struggling, yes.

8 Q. Now, we know that you first had contact with
9 this individual at 2:05:51 p.m. on June 3rd. How long
10 did this entire incident last, sir?

11 A. It seemed like it was over in five seconds.
12 I mean, it was very, very fast.

13 Q. I know that in the -- of course, we've only
14 got video of this first exit door, but we do seem to
15 have somewhere where we can pick up the reflection of
16 the door behind.

17 MR. RICHARDS: If we could bring up
18 2:06:08, please.

19 Q. (BY MR. RICHARDS) It appears as we're
20 looking at this exit view, that we can see the
21 reflection of the door behind; correct?

22 A. Correct.

23 Q. And that door that we're seeing the
24 reflection of is actually the exit out into the
25 sidewalk in the parking lot, isn't it?

1 A. Yes, sir.

2 Q. All right, sir. And if we go to 2:06:09,
3 that door is all the way open, isn't it?

4 A. Yes, sir.

5 Q. Do you know, sir, is that period of eight
6 seconds and nine seconds after 2:06, is that when the
7 shoplifter appears to have escaped?

8 A. Possibly. Like I said, it was -- it was just
9 a matter of seconds.

10 Q. Do you know of anything else that might have
11 caused that door to open? I mean, there's nothing in
12 the view or the reflection.

13 A. No. Unless somehow we would have triggered
14 the sensor, but I don't see how we would have done it
15 on that side.

16 Q. And you mentioned "that side."

17 MR. RICHARDS: If we could go back to
18 13, please.

19 Q. (BY MR. RICHARDS) There are sort of two
20 sides to this exit, aren't there?

21 A. Yes, sir.

22 Q. And on the right side is a set of doors and
23 then there's an EAS tower in between them and then on
24 the left side there's a second set?

25 A. Yes, sir.

1 Q. Are both of those automatic doors?

2 A. No, sir.

3 Q. Which are the automatic doors?

4 A. The ones on the right in the picture.

5 Q. And the video that we're watching is the
6 video of the automatic doors?

7 A. Yes, sir.

8 Q. All right, sir. Sir, in the seconds that
9 this incident occurred after Mr. Therrien got
10 involved, did you ever see him try to do a leg-sweep
11 or some kind of martial arts move like that?

12 A. No, sir.

13 Q. Did you ever see him punch the shoplifter?

14 A. No.

15 Q. Punch him in the eye?

16 A. No.

17 Q. Did you ever see him try to get him in a
18 right-arm choke-hold around his neck?

19 A. No, sir.

20 Q. Did you ever see him get him in a left-arm
21 choke-hold and hold him while he was going limp and
22 blacking out?

23 A. No, sir.

24 Q. Did you hear the shoplifter after
25 Mr. Therrien fell down to the ground loom over him and

1 say, "That will teach you to get involved, I hope I
2 killed you"?

3 A. No, sir.

4 Q. Did you ever get in between Mr. Therrien and
5 the shoplifter as Mr. Therrien was lying on the ground
6 and say, "Just go, get away, go out the door"?

7 A. No, sir.

8 Q. From the point that Mr. Therrien entered into
9 this incident, was there time to do anything in order
10 to protect Mr. Therrien?

11 A. No, sir.

12 Q. Now, Mr. Pavey, Mr. Therrien suggested
13 yesterday in his testimony that as he came into the
14 altercation after he looked up at, I guess, 2:05:51 or
15 52 and saw that you were apprehending this person and
16 that the person was trying to flee, he said that he
17 looked and saw that the shoplifter was getting the
18 better of you and that's why he got involved, that the
19 shoplifter had you down, and that you were losing the
20 fight.

21 Is that an accurate statement as to what was
22 occurring prior to Mr. Therrien getting involved?

23 A. No, sir.

24 Q. Did the shoplifter ever have you down?

25 A. No, sir.

1 Q. Was it ever your perception that the
2 shoplifter was getting the better of you?

3 A. No, sir.

4 Q. In fact, was it ever your perception that the
5 shoplifter was trying to do anything other than get
6 out the door?

7 A. No, sir.

8 Q. And the shoplifter never pulled a knife
9 before Mr. Therrien arrived, did he?

10 A. That's correct.

11 Q. As a matter of fact, he didn't pull a knife
12 until Mr. Therrien grabbed hold of him, did he?

13 A. Correct.

14 Q. **XXX XX XXX XXX, XXX: XXX XXXX XXX XXX XXXX**
15 **XX XXXXXX?**

16 A. **XX, XXXX XXX X XXXX XXXXX.**

17 Q. **XXX XXX XXXX XXX XXXX XXX XXXXXXXX?**

18 A. **XXXXXXXX.**

19 Q. **XXXX. XXX, XXXX XXX XX XXXXX XXXXXXXXXXXX XXXX**
20 **XXX XXXXXXXX XX XXXXXXX?**

21 A. **XX, XXX.**

22 Q. **XXXX XXX XXX XXXXX XX?**

23 A. **X XXXXX XX XXX X XXXXXXX XXXX XXXXXXXXXXX,**
24 **XXXXXXXX XXX XXXXX.**

25 Q. **XXX XXX XXX XXXX XXXXXXX XXXXXXXXXXX XXXXXXXXXXX**

1 XXXXX XXX XXXX XXXXX?

2 A. XXX, XXX.

3 Q. XXXX XXXXX XX XXXX XXX XXX XXXX XXXXXX XXXX
4 XXXXX?

5 A. X XXX XX XXXXXXXXXXX XXXXXX. X XXXXXX XX XXX
6 XXXXXXXXXXX XXXXXXXXXXX, X XXXXXX XX XXXXXX XXX XXXXXXXXXXX
7 XXXXXXXXXXXXX XX XXX XXXXX, XXXXXX XX XXX XXXX XXXX.

8 Q. XXXX XXX XXX XXXX XX XXXXX XXXXXXXXXXXXX?

9 A. X XXXXX XX XXX XXXXX XXXX.

10 Q. XXXX. XXX XXXX XXX XXX XXX XXXX XX XXXX
11 XXXXX?

12 A. X XXX X XXXXXX XXXXXXXXXXX XXXXXXXXXXX.

13 Q. XXX XXXXXXXXXXX XXXXXXXXXXX XXXXXXX?

14 A. XXX, XXX.

15 Q. All right. And did Target give you training
16 before it put you in that position?

17 A. Yes, sir.

18 Q. XXX XXXX XXXX XXX XXX XXXX XX XXXXXX XX
19 XXXXXXXXXXXXXXXXXXX XXXXXXXXXXX?

20 A. XXXX XXXXX XXXX XXXX XXXX XXX XXXXXX XX XXXX
21 XXXX.

22 Q. XXXX. XX XXXXXXXXXXX XX XXX XXXXXX XX XXXX?

23 A. XXX, XXX.

24 Q. And did you also have training to take that
25 position?

1 A. Yes, sir.

2 Q. Did the training involve studying of written
3 materials and that sort of thing?

4 A. Yes, sir.

5 Q. Was it online at that time?

6 A. I believe part of it was.

7 Q. Okay. And then was there some role-playing
8 or on-the-job training?

9 A. Yes, sir.

10 Q. At some point, did Target -- we've heard
11 reference to having to be a certified asset-protection
12 employee to make an apprehension. At some point, were
13 you certified?

14 A. Yes, sir.

15 Q. Was that in 2003?

16 A. Yes, sir.

17 Q. All right. And that was the position you
18 held at the time this incident occurred; correct?

19 A. Correct.

20 Q. **XXX XXX XXXXXX XX XXXXX XXXXXXXXXXXX XXXXX XXX**
21 **XX XXXXX XXXX XXXXXXXXXXXX XXXXXXXXXXXX?**

22 A. **X XXX.**

23 Q. **XXX XXX XXX XXXXXXXXXXXX XX XXXXX XXXXXXXXXXXX**
24 **XXXXXX XXX XXXX XXXXXXt?**

25 A. **XX.**

1 Q. XXXX XXX XXX XXXX X XXXXXXX?

2 A. XX, XX XXX XXXXX XX XXXXX XX XXXX, X XXXXXXX.

3 Q. XXX XXX XXX XXX XXXXXXX, XXX?

4 A. XXXXXXXX XXXXXXX. X XXX XXXX XX XX, XXX

5 XXXX, XX XXXX, XX XX XXXXXXX XX XXX XXXX, XXX XXX

6 XXXXXXX XXXXXXX XX XX XXXX XXXXX XXXXXXXX, XXX XXXXX

7 XXXX XXXXX, XXX XXX XXX XXXXXXX XXXXXXX XX XX XXX XXX

8 XXXX XXXXX XX XXX XXXXXXXX.

9 Q. XXX XXXXX. XXX XXXX XXX XXX XX XXXX XX XXXX
10 XXXXX?

11 A. X XXXX XXX XXXX XXXXXXX XX XXXXXXX XXX XX XXX
12 XXXXXXXXXXXX XXX XXXXXXXXXXXXXXX XXXXXXXXXXXX.

13 Q. XXX XX XXXX XXX XXXXXXXX XXX XXXX XXXX XXX
14 XXXX XXXXXXX?

15 A. XXX, XXX.

16 Q. XXX XXXX XXX XXX XXXXX XXXXXXX?

17 A. XXXXXXX XX XXXXX XX X XXXXX XXX XXXXX XXXX XX
18 XXXXXXX XX XXXX XXXX.

19 Q. XXXX. XXX XXX XXX XXX XXX XXXXXXX XXX?

20 A. XXXX XXXXXXXX.

21 MR. RICHARDS: Mr. Pavey, I don't think
22 I have any further questions for you. Thank you,
23 sir.

24 THE WITNESS: Thank you.

25 MR. DEMURO: Please put up 15A,

1 Ms. Wilson.

2 **REDIRECT EXAMINATION**

3 **BY MR. DEMURO:**

4 Q. You just told Mr. Richards, I think, that you
5 believe you were in control of the situation when
6 Mr. Therrien came in?

7 A. Correct.

8 Q. All right. So at first, you couldn't stop
9 him when he was standing up; right?

10 A. Correct.

11 Q. And then he struggled to get away from you in
12 the next frame; right?

13 A. Correct.

14 Q. Then he was on the ground and you were trying
15 to keep him on the ground or control him when he was
16 on the ground; correct?

17 A. No. I was trying to pick him back up.

18 Q. Okay. Then he looks like he's getting back
19 up; correct?

20 A. Correct.

21 Q. And you are attempting to throw or, in your
22 words, place him against the wall to put on handcuffs;
23 right?

24 A. Correct.

25 Q. That didn't happen, did it?

1 A. No.

2 Q. Okay. And it was at that point that
3 Mr. Therrien comes in; right?

4 A. Correct.

5 Q. Well, your testimony still is after all that
6 went on, couldn't put the handcuffs on, getting back
7 up, you couldn't stop him, you were in control?

8 A. It didn't go, you know, as ideally as I
9 hoped, but sometimes there's going to be a struggle.

10 Q. Right. Now, isn't it true that Target's
11 policies are that if somebody is trying to flee, that
12 the loss-prevention officer ought to let them go?
13 That's their policy; right?

14 A. No, sir.

15 MR. DEMURO: Please turn to Exhibit 62.
16 Don't put it on the screen yet, Ms. Wilson.

17 Q. (BY MR. DEMURO) Have you seen Exhibit 62,
18 before, which are called the asset protection common
19 directives?

20 A. I have.

21 Q. These are one set of policies that Target had
22 in place in March of 2005?

23 A. Correct.

24 Q. And if you turn to the third page of the
25 policies, does that appear to be an accurate copy of

1 the common directive on pursuit of shoplifters?

2 A. Is that on 3?

3 Q. It's actually 62, page 6.

4 A. Page 6. Yes, sir.

5 Q. Now, does this appear to be a copy of the
6 policy that was in effect at the time?

7 A. Yes, sir.

8 MR. DEMURO: Your Honor, at this time
9 I'd move into evidence Plaintiff's Exhibit 62, page
10 6.

11 THE COURT: Objection?

12 MR. RICHARDS: Not for this page, Your
13 Honor.

14 MR. DEMURO: Please put it up,
15 Ms. Wilson.

16 THE COURT: Be admitted. What's the
17 exhibit number?

18 MR. DEMURO: Exhibit 62, page 6.

19 THE COURT: So the Exhibit is 62?

20 MR. DEMURO: That's right, Your Honor.

21 MR. RICHARDS: It's my understanding,
22 Your Honor, he's not moved the admission of the
23 exhibit --

24 THE COURT: Not the whole book, but the
25 exhibit for this case is 62, I mean, that one page?

1 MR. DEMURO: That's right, Your Honor.

2 THE COURT: Okay.

3 MR. DEMURO: If you could highlight the
4 first paragraph on the bullet point, Ms. Wilson.

5 Q. (BY MR. DEMURO) The first paragraph says,

6 "xxxxxxxxxxxxxxxxxxxxxxxx xxx xx xx xxxxxxxx xx x

7 xxxxxxxxxxxxxxxxxxx xxxxxx xxx xxxxxxxxxxxxxx xx xxxxxxxx."

8 xxxxx "xxxxxxxxxxxxxxxx xx xxxxxxxx" xxxxx xx xxxxx xx

9 xxxxx xx xxxxxxx xxxxxx xxxxxxx; xxxxxxx?

10 A. Correct.

11 Q. xxxxx xxxxxxxxxxx xxxxxxxxxxx xxxxx xxx xxxxxx xx xx

12 xxxxxxxxxxx xxxxx xxxxxxx xxxxxxxxxxx xxxxxxxxxxxxxx xxxxxxx xx

13 xx xxxxxxxxxxx xxxxxxx xxx xxxxx xxxxx, xx xxxxxx xxxxxxxx

14 xxxxxxxxxxx?

15 A. Correct.

16 Q. And customers could get hurt; correct?

17 A. Correct.

18 Q. xxx xxxxx xx xxxxx, "xx x xxxxxxxxxxxxxx xxxxxxxx

19 xx xxxxx xxxxxxx xxxxxxx xxxxxxxxxxxxxx, xx xxxxx xxxxxxxx xxxxx

20 xxx xxxxx xxxxxxx xx xxx xxxxxxx, xxxxxxx, xxxxxxx, "

21 xxxxxxxx; xxxxxxx?

22 A. Correct.

23 Q. Now, when you first encountered the

24 shoplifter, he attempted to flee; correct?

25 A. Correct.

1 Q. Now, when you first tried to take down that
2 shoplifter, it would have been a much safer
3 apprehension if you had a second Target
4 loss-prevention employee there; correct?

5 MR. RICHARDS: Your Honor, I object to
6 the question.

7 THE COURT: What's the question?

8 MR. RICHARDS: This has been dealt with
9 by the court --

10 THE COURT: Sustained.

11 Q. (BY MR. DEMURO) Mr. Pavey, in any written
12 statement that you've ever signed, has there ever been
13 a statement that you've signed in which it says that
14 Mr. Therrien backed away -- excuse me -- that you told
15 Mr. Therrien to back away as you've testified here
16 today?

17 A. I don't know of any other statements.

18 Q. We know that it wasn't in your statement to
19 the police; right?

20 A. Correct.

21 Q. And it wasn't in your handwritten statement;
22 right?

23 A. Correct.

24 Q. And that's something that really portrays you
25 in a better light in terms of doing your job as an

1 asset-protection person; right?

2 A. Correct.

3 Q. Now, you didn't hear anybody from Target tell
4 you that -- say anything during this altercation, did
5 you?

6 A. No.

7 Q. There was nobody else, no other Target
8 employee in the area -- correct? -- that you heard.

9 A. Not that I heard.

10 Q. You didn't hear, for example, Ms. Kreps tell
11 Mr. Therrien to back away?

12 A. Not that I recall.

13 Q. Okay. At the time that Mr. -- at the moment
14 that you saw Mr. Therrien entering into the fight --

15 MR. DEMURO: Please put up 15A,
16 Ms. Wilson.

17 Q. (BY MR. DEMURO) -- you looked up and you saw
18 him coming into the fight -- correct? -- at some
19 point.

20 A. Are you referring to Mr. Therrien?

21 Q. Yes.

22 A. I wouldn't say that, no.

23 Q. Okay. At some point, you noticed he was
24 coming your way?

25 A. Not even coming my way. Like I said, my

1 attention was on the shoplifter and I see Mr. Therrien
2 come by me in a flash and latch onto the other guy's
3 arm.

4 Q. Now --

5 A. So I didn't, like, look off and see him
6 running towards me.

7 Q. And is that the point in time where you
8 say -- you claim that you told him to back off?

9 A. Yes.

10 Q. I thought you testified that you said "back
11 off" when he was running over?

12 A. Right. Whenever he came by, grabbed his arm,
13 I said, "Back off."

14 Q. Now, when you first saw him coming toward
15 you, you had a hold of the shoplifter?

16 A. Correct.

17 Q. And when you first saw Mr. Therrien coming
18 towards you, you didn't let go of the shoplifter;
19 right?

20 A. Right.

21 MR. DEMURO: No further questions.

22 THE COURT: Further cross-examination?

23 MR. RICHARDS: Very brief, Your Honor.

24

25

RECROSS-EXAMINATION

BY MR. RICHARDS:

Q. xxx xxxxx, xxx xxxx xxxxx xxxxx xxxx xxxxxx
xx xxxxxx xxxxxxxxxxxx xxxxxxxxxxxx xxxxxxxxxxxx xx xxxx
xxxxx xxxxx xxxxxxxxxxxx xxxx xxxx xxxx xxxxxx xxx xx
xxxx xxxxx.

A. Yes, sir.

Q. Did the shoplifter ever break away from your
hold?

A. No, sir.

Q. So you didn't have to give chase, did you?

A. No, sir.

Q. All right. If at any point you had felt like
you didn't have reasonable control over this
situation, did you have an option? In other words, if
at any point you thought that the shoplifter -- you
were not going to be able to restrain the shoplifter
safely, did you have options available to you?

A. Yes, sir.

Q. And what were those options?

A. xxxx, xx xx xxx xxxxx x xxxx xxxx x xxxxxx
xxxx xxxxxxxx xx xxx xxxxxxxxxxx, x xxxxxx xxxx xxxxxxx xxx
xxx xxxxxxxxxxxxxxx.

Q. xxx xxx xxx xx?

A. xxxxxxx.

1 Q. So that he could run out the door just like
2 he ultimately did --

3 A. Correct.

4 Q. -- when he was let go; correct?

5 A. Correct.

6 MR. RICHARDS: Thank you. Nothing
7 further.

8 **FURTHER REDIRECT EXAMINATION**

9 **BY MR. DEMURO:**

10 Q. xx xxxxxx xxxxxxxxx xxxxxx, xxxxx xx? xx xxx
11 xxx xxxxxx xx xxxxxxxx x xxxxxxxxxxx xxxxxxxxxxxx, xxx
12 xxxxx xx xxx xxx xx; xxxxxxxx?

13 A. Correct.

14 MR. DEMURO: No further questions, Your
15 Honor.

16 THE COURT: Just a moment. Just a
17 second. You may step down. May this witness be
18 excused?

19 MR. DEMURO: From the plaintiff, yes,
20 sir.

21 MR. RICHARDS: Yes, Your Honor.

22 THE COURT: Thank you, sir, for your
23 testimony. You may step down.

24 THE WITNESS: Thank you.

25 THE COURT: You may be excused.

1 MR. DEMURO: You may call your next
2 witness.

3 MR. DEMURO: May I approach, Your Honor?

4 THE COURT: You may.

5 *(Bench conference outside the hearing of the jury)*

6 MR. DEMURO: At this time I would like
7 to offer into evidence, either by way of recalling
8 Mr. Therrien or by offering the tape-recording itself,
9 Mr. Therrien's statement in the hospital in which he
10 clearly stated that he, Mr. Pavey, asked him for his
11 help. This was a statement made after -- immediately
12 after the incident prior to any motive for
13 fabrication.

14 Mr. Richards has now introduced evidence
15 designed to show that Mr. Therrien lied and fabricated
16 the story about Mr. Pavey asking for help.

17 THE COURT: Now you've lost me. Let's
18 start -- you want to do what now?

19 MR. DEMURO: I want to enter into
20 evidence at this point a prior consistent statement of
21 Mr. Therrien. Under the relevant hearsay rule, once
22 your adversary has questioned the veracity of a
23 witness, I'm entitled to put in evidence that shows a
24 prior consistent statement prior to the motive for
25 fabrication.

1 THE COURT: Which is what?

2 MR. DEMURO: Which is a statement that
3 Mr. Therrien made in the hospital to the news media --

4 THE COURT: That's the issue?

5 MR. DEMURO: Yeah. So this is beyond
6 the duty question. This goes to credibility because
7 his credibility has been impeached by Target, and now
8 I am entitled to rehabilitate under the evidence code.

9 MR. RICHARDS: I think it's a side
10 issue, it's collateral, it's a collateral issue to
11 what we're trying. If anything's going to be
12 played -- what he's trying to do is to play the news
13 media story from the hospital, which the court said is
14 not going to be admissible under the order in limine.

15 And I suspect -- I mean, if it wasn't the day
16 of the incident, it was several days later when that
17 was made -- and I suspect that the intention would be
18 not to play simply that statement in order to
19 establish that a prior consistent statement was made
20 in the hospital, but to play the whole thing.

21 If that one simple statement is played, you
22 know, I don't know -- again, it's collateral, but I
23 don't know that it's problematic. But if more than
24 that is played, that is hearsay because it's not a
25 prior consistent statement, it's something completely

1 different.

2 MR. DEMURO: I'm not going to play the
3 entire news media, never intended to. It's just the
4 statement that he made --

5 THE COURT: Okay. When you say "just
6 the statement," what is the statement?

7 MR. DEMURO: The statement is, when
8 asked by the reporter what happened, he is going to
9 testify that he ran over to the doors, the security
10 guard asked for his help, and he helped.

11 MR. RICHARDS: I think it's a little bit
12 more involved than that in what he says.

13 THE COURT: Well, what's the -- what's
14 the -- is this a recording?

15 MR. DEMURO: Yes, sir.

16 MR. RICHARDS: It's a news report.

17 THE COURT: News story?

18 MR. DEMURO: I'm not showing any of the
19 reporters or any of the coverage pieces or anything
20 like that, just his statement, Mr. Therrien's
21 statement, when he was asked what happened.

22 THE COURT: Do you have another witness
23 so I can look at this at noon?

24 MR. DEMURO: Yes, sir.

25 THE COURT: Let's do another witness and

1 I can look at this at noon.

2 (Bench conference concluded)

3 MR. DEMURO: Your Honor, may I lean
4 these exhibits against your well?

5 THE COURT: You may.

6 MR. DEMURO: May it please the court,
7 Your Honor, plaintiff calls Ms. Julie Plonczynski to
8 the stand.

9 JULIE PLONCZYSNKI,
10 *after having been first duly sworn, says in reply to*
11 *the questions propounded as follows, to-wit:*

12 DIRECT EXAMINATION

13 BY MR. DEMURO:

14 Q. Ms. Plonczynski, before we begin, I really
15 want to make sure I'm pronouncing your name correctly.
16 Could you please pronounce your name for me and the
17 jury?

18 A. Plonczynski.

19 Q. Okay. I got it right.

20 Now, Ms. Plonczynski, as I understand it, you
21 are what's called an executive team leader for asset
22 protection at the Super Target that we have been
23 talking about?

24 A. That's correct.

25 Q. And in that role, you basically are the

1 supervisor of all the loss-prevention employees at the
2 store; right?

3 A. Yes.

4 Q. And you're here today to testify as Target's
5 representative in court?

6 A. That's correct.

7 Q. But you are not necessarily the person that
8 makes all the decisions about staffing that goes on at
9 your store; correct?

10 A. Correct.

11 Q. Okay. For example, the decision of how many
12 uniformed security guards are on duty at any given
13 time is a function of somebody higher up than you's
14 decision?

15 A. Yes. But I also have input into it.

16 Q. But ultimately, it's the budgetary
17 constraints that are put on you from a district or
18 regional level that determine your staffing levels --

19 A. Yes.

20 Q. -- correct?

21 I'm sorry. Correct?

22 A. Yes.

23 Q. **XXX XXXXX. XXX, XXX XXXXXXXX XXXXXXXX XX**
24 **XXXXXX XX XXXX?**

25 A. **XXXXXXXX.**

1 Q. XXX X XXXXX XXXXXX XXXXXX XXX XXXXX XX XXXXX,
2 XXXX XXXX XXXXXX, XXXX XX XXXX XX XX XXX XX XXXX XXX
3 XXXX XX XXXX XXXXXXXXXXXX?

4 A. XXX.

5 Q. XXX XXXX XXXX XX XXXXXX XX XXXX?

6 A. XXX.

7 Q. XXX XXXXXXX XXX X XXXXXX XXXXXX XXXX XXX XXXX XX
8 XXXXXXX XXXX XXXX XXXXXXX XXX XX XX XXX XXXXXXX
9 XXXXXXX XXXX XXXXX, XXXXXX XXXXXX XX XXXXX XXXXXX
10 XXXXX XXXX?

11 A. XXX.

12 Q. XXXXXXXXXXXXX, XXX XXXX XXXX XX XXX XXXXXX
13 XXXXXXXXXXXX XX XXXX XXXXXX XX XXXXX XX XXXX?

14 A. XXX.

15 Q. And that's two to three months -- about two
16 and a half months before the stabbing that took place
17 in this case?

18 A. Two months, yes.

19 Q. Now, at that time -- have I accurately
20 described for the jury what the roles are of a Target
21 asset-protection specialist and a Target specialist?
22 Strike that. Terrible question.

23 You had basically two types of people that
24 worked on the floor for you; right?

25 A. Yes. Including myself.

1 Q. In asset protection?

2 A. Yes.

3 Q. You had the plain-clothes folks like

4 Mr. Pavey; right?

5 A. Yes. Asset-protection specialist.

6 Q. And you had the uniformed folks, and we
7 haven't seen any of them involved in this case; right?

8 A. Yes.

9 Q. All right. Now, around the time of this
10 incident, you believed that you were understaffed;
11 correct?

12 MR. RICHARDS: Your Honor, I object to
13 this. It's clearly covered by your order.

14 THE COURT: Sustained.

15 MR. DEMURO: May I make an offer of
16 proof?

17 THE COURT: You may.

18 *(Bench conference outside the hearing of the jury)*

19 MR. DEMURO: The plaintiff's offer of
20 proof is that this witness believed that she was
21 understaffed in terms of her security staff as of the
22 time of the incident.

23 MR. RICHARDS: Your Honor, at this
24 point, I would again on behalf of Target move for a
25 mistrial based upon the questioning of counsel for the

1 plaintiff. The jury's now been advised that -- or led
2 to believe that there was a prior incident involving
3 Mr. Pavey, that there was a length of time that he
4 tracked the shoplifter without contacting anyone for
5 assistance, that there's an implication that Target
6 pressures its employees to make apprehensions, that
7 there is training to use more than one person to make
8 apprehensions, that there was a requirement that more
9 than one person make apprehensions, that there were no
10 other employees available to assist in apprehensions,
11 and now this injection that there are budgetary
12 restrictions which prevented adequate staffing.

13 This is clearly injecting into the hearing of
14 the jury matters that the court has said are not to
15 come in to this case and it is prejudicial to Target,
16 and for that reason I must object and ask that the
17 jury be admonished and move for a mistrial.

18 THE COURT: Counsel?

19 MR. DEMURO: Well, many of the things
20 that he just talked about he never objected to. I
21 don't know why he would want a mistrial.

22 THE COURT: Well, he shouldn't have to
23 object to it because it's part of the court's motion
24 in limine. You, you know, from my view are trying to
25 try the case you intended to try before I entered the

1 motion in limine. I've given you the benefit of the
2 doubt, that you're doing that to preserve a record in
3 the event that I'm wrong.

4 But that question that you just asked totally
5 violates the court's order. I'm going to instruct
6 them to disregard the question and overrule the
7 defendant's motion for a mistrial.

8 *(Bench conference concluded)*

9 THE COURT: Ladies and gentlemen of the
10 jury, the last question that was asked by counsel
11 should be disregarded in its entirety by the jury and
12 give it no effect or give it any further thought.

13 Q. (BY MR. DEMURO) Ms. Plonczynski, do you
14 recognize the gentleman sitting in the back of the
15 courtroom?

16 A. No.

17 Q. You don't recognize that as the expert that
18 Target has hired in this case to come in and give
19 testimony?

20 A. No.

21 Q. Never met him before?

22 A. No.

23 Q. Do you agree with Mr. Pavey that every
24 apprehension has a risk of danger to it?

25 A. Yes.

1 Q. xxx xxxx xxxxxxxx xxxx xxxxxx xxx xx xx xx
2 xxxxx xxxxxx xxxxxxxxxxxxxxxx xx xxx-xxx xx xxxxxxxxxxxx?

3 A. Yes.

4 Q. Because sometimes shoplifters resist;
5 right?

6 A. Yes.

7 Q. Because they want to get away?

8 A. Yes.

9 Q. And sometimes shoplifters carry knives;
10 correct?

11 A. Sometimes.

12 Q. Yeah. Target knew that on June 3, 2005?

13 A. No, we didn't.

14 Q. You didn't know that sometimes shoplifters
15 carry knives on June 3, 2005?

16 A. It's a possibility. We did not know that
17 that shoplifter carried a knife.

18 Q. Well, I accept that but that's not my
19 question, Ms. Plonczynski.

20 On June 3, 2005, isn't it true that Target
21 was aware that sometimes shoplifters carry knives?

22 A. Yes.

23 Q. And Target was aware that when a physical
24 altercation erupts between its employee and a
25 shoplifter, that there is a danger that customers

1 could be attracted to that area?

2 A. Yes.

3 Q. In this case, you were aware that Target's
4 produced a lot of documents; right?

5 A. Yes.

6 Q. Personnel files, your personnel file,
7 Mr. Pavey's personnel file?

8 A. Yes.

9 Q. Have you ever seen the document that says
10 Mr. Pavey was certified as an asset-protection
11 specialist to make apprehensions produced in this
12 case?

13 A. I've never personally seen it, no.

14 Q. Neither have I. Do you know where it is?

15 A. It would be in his file.

16 Q. His personnel file?

17 A. Yes.

18 Q. Do you know why we didn't get it when we had
19 his personnel file?

20 A. No.

21 Q. How long does it take for the police to get
22 to Target once they're called typically?

23 MR. RICHARDS: Your Honor, object to
24 relevance.

25 THE COURT: Sustained.

1 MR. DEMURO: Can I make an offer of
2 proof, Your Honor?

3 THE COURT: You may.

4 *(Bench conference outside the hearing of the jury)*

5 MR. DEMURO: Target had -- its security
6 has a walkie-talkie system which allows them to access
7 a 911 operator within moments, and the police are able
8 to respond typically within two or three minutes to
9 the Target location. That's the offer of proof.

10 THE COURT: Okay. Accept the offer of
11 proof. You may proceed.

12 *(Bench conference concluded)*

13 Q. *(BY MR. DEMURO)* Do you agree,
14 xxx xxxxxxxxxxxx, xxxx xxxxxxxxxxx xxxxx xx xxxxxxxx x
15 xxxxxxxxxxx xxxxxxx xx xxxxx xx x xxxxx xxxxxxx?

16 A. xxx.

17 Q. xxx xxxxx xxx xxxxxx xxxxxxx xxxxx xxxxxxx, xxx
18 xxxxxx xxxxxx xx xxxxxxxxxxx xxxxxxxxxxxxxxxxxx xxxxx xxxxxxx?

19 A. I'm sorry. Can you repeat the question?

20 Q. xxx. xx xxxxxxxxxxx xxxxxx xxxxxxx xx xxxxx xx x
21 xxxxx xxxxxxx xxx xxxxxx xxx xxxxxx xxxxxx xx xxxxxxxxxxx
22 xxxxxxxxxxxxxxxxxx xxxxx xxxxxxx?

23 A. I still don't understand the question.

24 Q. Do you agree with that?

25 A. I don't understand. Your mixing two terms of

1 Target that's not making sense to me.

2 Q. The nonviolent intervention?

3 A. Yes.

4 Q. Let me see if I can break it down a little
5 bit easier. I apologize for being confusing.

6 xxx xxxxx xxxx xxxxxxxx xxxxx xxxxxxx xx xxxx
7 xx x xxxx xxxxxxx?

8 A. xxx.

9 Q. xxx x xxxx xxxxxxx xxxxx xx xxxxxxx xx xxxx
10 xxxxx xxx xxxxx xxxxx xx xxxxxxx xx xxxxxxx xxx
11 xxxxxxxxxxx xxxxx xxxxx xxxxx?

12 A. xxxxxxxx xxxxx xx xxx xxxxx xxxxx xxx xxxxx xx
13 xxxxxxxxxxx xxxxx, xxx.

14 Q. xxx xxxxx. xx xxx xxxxx xxxxx x
15 xxxxx-xxxxxxxxxxxx xxxxxxx xxxxxxx xxxxx xxxxx xx xxxxx x
16 xxxxxxxxxxxxxxx xxx xxxxxxx xxx xxxxx xxxxx x xxxxxxx xx xxxxx
17 xxxxx xxxxxxxxxxx xxxxx xxx xxxxx?

18 MR. RICHARDS: Object to the relevance,
19 Your Honor.

20 THE COURT: Sustained.

21 MR. DEMURO: I've made my prior offer of
22 proof on that point, Your Honor. May I reurge it
23 again?

24 THE COURT: You may.

25 Q. (BY MR. DEMURO) Do you agree that making an

1 initial aggressive move can set the stage for a
2 violent confrontation?

3 MR. RICHARDS: Same objection, Your
4 Honor.

5 THE COURT: Sustained.

6 MR. DEMURO: Same offer.

7 Q. (BY MR. DEMURO) Now, Target's
8 loss-prevention officers aren't given training -- like
9 Mr. Pavey is not given training on how to actually
10 physical fight, is he?

11 A. No.

12 Q. Their training consists mostly of applying
13 defensive moves to try to protect themselves if a
14 shoplifter fights them?

15 A. If a shoplifter is fighting them, yes.

16 Q. Right. That's most of their training, how to
17 get away from holds and to block punches that a
18 shoplifter might be throwing at them; correct?

19 A. That's correct.

20 Q. They're not trained to one-on-one perform
21 offensive maneuvers, are they?

22 A. No.

23 Q. Now, you've reviewed the video and this tape,
24 haven't you?

25 A. Yes.

1 Q. And it's your opinion that Stacie Pavey did
2 everything by the book, everything right; correct?

3 A. Yes.

4 Q. Now, do you recall when Mr. Therrien's
5 daughter came to Target the day of the stabbing?

6 A. Yes.

7 Q. And she was coming back to get his car and to
8 gather his belongings?

9 A. I was unaware about the car. It was my
10 understanding that she was coming to get his
11 merchandise.

12 Q. So you agree that you did have a conversation
13 with Jessica Therrien; correct?

14 A. Yes.

15 Q. Did you, as Jessica Therrien says, tell her
16 that her dad was a hero in your heart?

17 A. No, I never said that.

18 Q. So she just must be making that up?

19 A. No. I don't recall ever saying that word,
20 "hero."

21 Q. Well, could she have said it and you just
22 didn't hear it?

23 A. No. It's not a word that I would use.

24 Q. What word did you use?

25 A. I didn't refer to him as anything other than

1 the victim of a stabbing.

2 Q. So Jessica must be just making that up?

3 A. I never said it.

4 Q. Now, I want to talk about the incident
5 itself.

6 As I understand it, you were called to the
7 music and CD section by Mr. Pavey who was observing
8 several youth?

9 A. That's correct.

10 Q. And you guys decided that you would split up,
11 and Mr. Pavey would follow the guy who was the
12 eventual stabber and you would follow the other three
13 kids who were looking like they might be shoplifters;
14 is that right?

15 A. Correct.

16 Q. Now, the other three kids turned out to be
17 innocent; right?

18 A. Correct.

19 Q. When did you realize that those kids were not
20 shoplifters?

21 A. When they left the area with no merchandise.

22 Q. And how long ago -- when you say "the area,"
23 do you mean the area of the music and CD area?

24 A. Correct.

25 Q. Okay. And how long a period of time was that

1 by the time that you picked them up until the time you
2 realized that they had left the CD area without any
3 merchandise?

4 A. Approximately five minutes. Could have been
5 a little bit longer.

6 Q. Okay. Now, at some point in time, Mr. Pavey
7 radioed you and told you that he had concealment, he
8 had seen concealment on the stabber; correct?

9 A. That's correct.

10 Q. And that he was going to make an
11 apprehension?

12 A. I believe he said that he saw concealment.

13 Q. Well, you understood that that meant that he
14 was going to make an apprehension?

15 A. Not necessarily, no.

16 Q. Well, you didn't think he was going to make
17 an apprehension?

18 A. The shoplifter could have dumped the
19 merchandise in that time. I had no idea of
20 Mr. Pavey's location.

21 Q. Okay. Now --

22 THE COURT: Counsel, let's stop for the
23 noon recess.

24 MR. DEMURO: Perfect, Your Honor. Thank
25 you.

1 THE COURT: Members of the jury, if
2 you'll remember my admonition not to discuss this
3 among yourselves or allow anyone else to discuss it
4 with you during the noon break. I'll ask you to be
5 back at 1:15.

6 Now, if everyone in the courtroom would
7 please remain seated as the jury leaves the courtroom.

8 *(The jury exits the courtroom)*

9 THE COURT: Let the record reflect the
10 jury's departed the courtroom.

11 Anything from plaintiff's counsel before we
12 recess?

13 MR. DEMURO: No, Your Honor.

14 THE COURT: Defense?

15 MR. RICHARDS: No, Your Honor.

16 *(Lunch recess was taken)*

17 THE COURT: Let the record reflect the
18 jury is in the box, parties are present with counsel.

19 You may continue with your witness. Ma'am,
20 if you'll take the witness stand.

21 MR. DEMURO: Thank you, Your Honor. May
22 it please the court.

23 THE COURT: You may proceed.

24 MR. DEMURO: Thank you, Your Honor.

25 Q. *(BY MR. DEMURO)* Ms. Plonczynski, before the

1 break, I'd asked you whether or not when Mr. Pavey
2 called you and said that he had seen the suspect
3 conceal the merchandise, at that point whether or not
4 you knew he was going to make an apprehension and you
5 said you weren't sure; correct?

6 A. Correct.

7 MR. DEMURO: Now, Ms. Wilson, please
8 turn to Exhibit 57.

9 Q. (BY MR. DEMURO) And do you recall after the
10 incident being required by your employer, Target
11 Corporation, to give a statement that Target would use
12 for its reporting system?

13 A. Yes.

14 Q. That it would use to put in the database and
15 it would use to keep track of criminal events like
16 this?

17 A. Yes.

18 MR. DEMURO: Ms. Wilson, could you
19 please blow up that particular paragraph?

20 Q. (BY MR. DEMURO) And is Exhibit 57, which is
21 already admitted into evidence, that statement?

22 A. Yes.

23 Q. All right. Now, in that statement, you say,
24 "The subject re-entered the music and movie department
25 with a shopping cart. Mr. Pavey continued observation

1 and I continued observation on the three juveniles.
2 The three juveniles went to the electronics
3 department, approximately five minutes went by when
4 Mr. Pavey radioed that he had observed concealment on
5 the subject and he was going to make an apprehension."

6 So does that refresh your recollection that
7 you did, in fact, know when Mr. Pavey called you and
8 said he had concealment that he was going to make an
9 apprehension?

10 A. Yes.

11 Q. You did know that?

12 A. Well, I understand what I wrote and that's
13 true what I wrote. But when he radioed me and he said
14 he saw concealment and he said he was going to make an
15 apprehension, I didn't know for sure at that point he
16 was going to make an apprehension 100 percent.

17 Q. Okay. Now, let's go to another statement
18 that you made, Exhibit 58.

19 Do you remember making a statement to
20 Target's claims adjustor, a tape-recorded statement?

21 A. Yes.

22 Q. And is Exhibit 58 that statement?

23 A. Yes.

24 Q. And this statement was made shortly after the
25 incident? It indicates that it was made on June 6,

1 2005.

2 A. Yes.

3 Q. Okay. And on page 3 of that statement, which
4 is Exhibit 58, page 3 --

5 MR. DEMURO: Ms. Wilson, if you could
6 blow up this paragraph.

7 Q. (BY MR. DEMURO) -- "you again say, About
8 five minutes went by and he radioed" -- Mr. Pavey --
9 "via two-way radio that he had concealment on the
10 subject and that he was going to make an
11 apprehension."

12 Do you see that?

13 A. Yes.

14 Q. So you knew at least that he thought that he
15 was making an apprehension; correct?

16 A. Yes.

17 Q. And you decided not to go over and help?

18 A. No.

19 Q. Correct?

20 A. No.

21 Q. At that point when he told you you were
22 making an apprehension, you didn't go over and help,
23 did you?

24 A. I had no idea where he was in the store. I
25 contacted him to find out if he was going to make the

1 apprehension and I didn't hear anything back from
2 him.

3 Q. Now, you know that -- what steps did you take
4 to move to where Mr. Pavey may have been making the
5 apprehension?

6 MR. RICHARDS: Judge, I object to
7 relevance.

8 THE COURT: Sustained.

9 Q. (BY MR. DEMURO) What did you -- strike that.

10 xxx xxxx xxxx xxxx xxxx-xxxxxxxxxxxx xxxxxxxx
11 xxxxx xxx xxxxxxxxxxxxxxxx xxxxxx xx xxx xxx xxxxx;
12 xxxxxxxx?

13 A. xxxxxxxx.

14 Q. xx xxx xxxx xxxx xxxx xxx xxxxx xxxx xxxx xx
15 xxx xxxxx xx xxxx xx xxxxxxxxxxxxxxx, xxxxx xx xxx xxxxx
16 xx xxxxx xxxx xxxxxxxxxxxxxxx xx xxx xx xxx xxx xxxxx;
17 xxxxxxxx?

18 A. Correct.

19 Q. Now, did you move towards any of those two
20 doors when he told you that he was --

21 A. I was already near --

22 THE COURT: Ma'am, just a minute.
23 Now.

24 Q. (BY MR. DEMURO) Did you move towards one of
25 those doors when he told you that he was going to make

1 an apprehension?

2 THE COURT: Don't answer that
3 question.

4 MR. RICHARDS: Same objection.

5 THE COURT: Sustained.

6 MR. DEMURO: I'd like to make an offer
7 of proof on that.

8 THE COURT: You may.

9 *(Bench conference outside the hearing of the jury)*

10 MR. DEMURO: My offer is she would
11 testify that she made -- she voluntary chose not to go
12 over to where the place of the apprehension was taking
13 place even though she knew that he was going to make
14 the apprehension by himself.

15 MR. RICHARDS: It's irrelevant, Your
16 Honor. She was not involved.

17 THE COURT: Offer of proof is accepted.

18 *(Bench conference concluded)*

19 Q. *(BY MR. DEMURO)* You knew when he had radioed
20 you that he was going to make the apprehension that
21 there were no other Target security guards in the
22 store; correct?

23 A. Correct.

24 Q. Now, in your statement that's Exhibit 53 --
25 if Ms. Wilson could please put that up -- I'm sorry.

1 That's fine.

2 Exhibit 53, take a look at it. Does it look
3 like the CIRS report to Target?

4 A. Yes.

5 MR. DEMURO: And if we can blow up that
6 middle paragraph, Ms. Wilson. Not that one. I'm
7 sorry. The one above, this one.

8 Q. (BY MR. DEMURO) This is the same statement
9 that we just previously looked at that you
10 incorporated into the CIRS statement; right?

11 A. Correct.

12 Q. And you knew this was an important statement
13 to get accurate because it was the statement that you
14 were providing to your employer; correct?

15 A. Correct.

16 Q. For the purpose of documenting this criminal
17 incident?

18 A. Yes.

19 MR. DEMURO: Now, Ms. Wilson -- strike
20 that.

21 Q. (BY MR. DEMURO) Turn to Exhibit 53, page 5.

22 A. (Witness complies).

23 Q. At the bottom of this guest incident report
24 is the name of Teresa Johnson and the signature of
25 Teresa Johnson. Who was Ms. Johnson?

1 A. She was the executive team leader over human
2 resources.

3 Q. For Target?

4 A. Yes.

5 Q. For the Supercenter?

6 A. Yes.

7 Q. Okay. And this is her guest incident report
8 that she also had to fill out?

9 A. Yes.

10 MR. DEMURO: Now, if you'll blow up
11 the middle section, please, Ms. Wilson. Right there,
12 yes, ma'am. Right there. That's okay.

13 Q. (BY MR. DEMURO) Do you see where the
14 executive human resource manager says, "Guest saw our
15 APS in a confrontation, ran to assist, and was stabbed
16 in lower left-side area"? Do you see that?

17 A. Yes.

18 Q. So this is another document in which Target,
19 when the incident took place, described it as a
20 customer assisting a Target employee; correct?

21 A. Yes.

22 Q. Now, getting back to your statement, Exhibit
23 57 --

24 MR. DEMURO: If we could again blow up
25 that paragraph.

1 Q. (BY MR. DEMURO) -- after Mr. Pavey radioed
2 you that he was going to make the apprehension, you
3 claim that you radioed him back and that he did not
4 respond; correct?

5 A. Correct.

6 Q. And approximately two minutes later
7 you -- excuse me -- two minutes -- probably two
8 minutes went by and that's when you tried to contact
9 him; right?

10 A. Correct.

11 Q. In other words, you got the call, two minutes
12 went by, you tried to call him, and there was no
13 answer by Mr. Pavey; correct?

14 A. Correct.

15 Q. Okay. Now, the next sentence you say that,
16 "I continued" -- I'm right here -- "I continued my
17 observation of the three juveniles while Mr. Pavey
18 contacted me over the two-way radio. He was
19 requesting my presence at the green doors
20 immediately."

21 Now, this second time that Mr. Pavey called
22 you on his radio, by that time he had already been
23 stabbed; correct?

24 A. Correct.

25 Q. That was the second call where he called you

1 to say, come to the green doors immediately?

2 A. Correct.

3 Q. He'd already been stabbed at that point?

4 A. Yes.

5 Q. Now, you say in your statement to Target that
6 at that time that that second call was made, that you
7 were continuing your observation of the three
8 juveniles; correct?

9 A. Correct.

10 Q. But that's not the case, is it? You were
11 actually walking with the camera repairman, Scott
12 Manley, when that call came in; isn't it true?

13 A. No, that's not correct.

14 Q. Okay. So your testimony is you weren't
15 walking with Mr. Manley when that second call came
16 in?

17 A. Absolutely.

18 Q. Okay. Now, after you got that first call
19 from Mr. Pavey that he was going to make an
20 apprehension, you knew that he was going to make that
21 apprehension by himself; correct?

22 A. No.

23 Q. Who else do you think was going to help?

24 A. Myself.

25 Q. Oh. But you've made no effort to move to

1 where he was?

2 A. I made an effort. I was at the other door.

3 Q. Which other door?

4 A. The green side.

5 Q. And when you saw that he wasn't over there,
6 what did you do?

7 A. I had no idea where Mr. Pavey was.

8 Q. If he wasn't at the door, you knew he was
9 going to make the apprehension at the other door?

10 A. Not necessarily. I had no idea of the
11 location of Mr. Pavey in the store.

12 Q. Why didn't you -- when Mr. Pavey called you
13 the first time and said, I'm getting ready to make an
14 apprehension, why didn't you ask him, what door are
15 you going to be making your apprehension?

16 MR. RICHARDS: Your Honor, let me object
17 to this. This is becoming argumentative and it's
18 irrelevant to what the court has ruled is the issue of
19 the case.

20 THE COURT: Argument, Counsel?

21 MR. DEMURO: Well, I think it's very
22 relevant. It calls into question why there wasn't a
23 second security guard at the incident.

24 THE COURT: Sustained.

25 Q. (BY MR. DEMURO) Now, you didn't see the

1 stabbing take place, did you, ma'am?

2 A. No.

3 Q. You didn't see anything that happened in the
4 vestibule that day; right?

5 A. No.

6 MR. DEMURO: May I approach the well,
7 Your Honor, with these exhibits?

8 THE COURT: You may.

9 Q. (BY MR. DEMURO) Now, before I get there,
10 getting back to your statement, nowhere in your
11 statement does it say, that we just looked at, Exhibit
12 57, that you were somehow moving to the other door
13 trying to find Mr. Pavey? Doesn't say that, does
14 it --

15 A. I wasn't.

16 Q. -- in your statement?

17 Right, it doesn't say that?

18 A. Correct.

19 Q. Is says you were following these other three
20 juveniles?

21 A. I wasn't following them.

22 Q. Okay.

23 MR. DEMURO: Would you blow that up?

24 Q. (BY MR. DEMURO) It says you were continuing
25 your observation of the three juveniles?

1 A. I was observing them. I wasn't following
2 them.

3 Q. There's a difference?

4 A. There is a difference.

5 Q. Okay. So you were continuing your
6 observation is what your statement was --

7 A. Yes.

8 Q. -- of the three individuals?

9 It doesn't say on here that you were trying
10 to locate Mr. Pavey, does it?

11 A. No.

12 Q. Okay. Doesn't this mean to imply that what
13 you were really doing is trying to observe the three
14 juveniles and not help Mr. Pavey?

15 A. No.

16 Q. Isn't that what you were meaning to convey to
17 Target?

18 MR. RICHARDS: Your Honor, I object.
19 It's argumentative and it's irrelevant.

20 MR. DEMURO: I'll withdraw.

21 THE COURT: Question withdrawn. Next
22 question.

23 MR. DEMURO: Go to Exhibit 15A, please,
24 Ms. Wilson.

25 Q. (BY MR. DEMURO) Now, we know that the first

1 confrontation with the shoplifter occurred at 2:05:50;
2 correct?

3 A. Yes, yes.

4 Q. And the first time that we see you arrive on
5 the scene is almost a minute later at 2:06:49 --

6 A. Yes.

7 Q. -- correct?

8 Is this your picture, Miss?

9 A. Yes.

10 Q. And at that time there were women and
11 children still coming through the exit ay; correct?

12 A. Correct.

13 Q. And the one person that we see up here at
14 2:06:41, some 50 seconds after the altercation, is
15 Lisa Kreps?

16 A. Correct.

17 Q. Okay. At the time that you arrived at
18 2:06:49, almost exactly a minute after the shoplifter
19 was there, you were the first other security personnel
20 that arrived at the scene other than Mr. Pavey;
21 correct?

22 A. Yes.

23 Q. Target has what, 88 cameras in the Super
24 Target store at the time of this incident?

25 A. Approximately.

1 Q. And 78 of the cameras are digital?

2 A. Approximately, yeah.

3 Q. And the rest are analog, meaning they use VHS
4 tapes?

5 A. Yes.

6 Q. But this is the only view that we have of the
7 actual scuffle itself?

8 A. Yes.

9 Q. Now, on that day there was somebody from a
10 company called "Sensormatic" out there trying to fix
11 some cameras?

12 A. Correct.

13 Q. Some of your digital cameras -- excuse
14 me -- analog cameras were down?

15 A. All of the analog cameras were down.

16 Q. And that's what Mr. Manley was doing?

17 A. Yes.

18 Q. Now, Mrs. Plonczynski, you don't deny that
19 Mr. Therrien was trying to help Mr. Pavey when he came
20 into that vestibule, do you?

21 A. I think he thought he was going to help, yes.

22 Q. You don't deny that, do you, that he thought
23 he was helping?

24 A. Yes. No, I don't deny that. Sorry.

25 MR. DEMURO: No further questions, Your

1 Honor.

2 MR. RICHARDS: May I proceed, Your
3 Honor?

4 THE COURT: You may proceed.

5 MR. RICHARDS: Thank you.

6 **CROSS-EXAMINATION**

7 **BY MR. RICHARDS:**

8 Q. Ms. Plonczynski, I believe if we can pull up
9 the photo of you entering the area, that's the one
10 that you and Mr. DeMuro just discussed as your first
11 arriving on the scene; is that correct?

12 A. Yes.

13 Q. And that is you in the white shirt?

14 A. Yes.

15 Q. And the time of that is 2:06:49; correct?

16 A. Correct.

17 Q. And if we could go then to 2:07:12, tell me,
18 who is that gentleman that we're seeing now?

19 A. Scott Manley with Sensormatic.

20 Q. All right. That's about 20 seconds after you
21 arrived on the scene?

22 A. Yes.

23 Q. And I think we can probably scroll back a
24 couple and see when he first shows up.

25 You said a moment ago that you were not in

1 your recollection with Mr. Manley when you got this
2 radio call. How is it that you remember that?

3 A. Because I questioned why he was responding.
4 I had no idea why he would even be on the scene being
5 that he was in my office and we have two-way radios.
6 Well, the radios are on in my office. So when he was
7 repairing the camera unit, the system, he said that he
8 overheard Stacie's cry for help over the two-way radio
9 and then he had responded.

10 Q. Now, is the equipment that was being repaired
11 by Mr. Manley, is that located in your office?

12 A. Yes.

13 Q. And you say you have radios that are in the
14 office and turned on?

15 A. Yes.

16 Q. I see. Now, of course as we've discussed,
17 you didn't see this incident occur, did you?

18 A. The stabbing incident, no, I did not.

19 Q. All right. But you have seen the video of
20 the incident; correct?

21 A. Yes.

22 Q. And many times, I gather?

23 A. Many times.

24 Q. If we could go to 2:05:51, you were asked
25 some questions earlier about whether Mr. Pavey acted

1 according to the policy and acted correctly.

2 xxxxx xxxxxxxxxxx xxxxxx xxxxxx xxx xx

3 xxxxxx-xxxxxxxxxxxx xxxxxxxxxxx xx xxxxxxxx xx xxxxxxxxxxx x

4 xxxxxxxxxxxxxx xxx xx xxxxxxxx xx xxx xxx xxx xxx?

5 A. xxx.

6 Q. xxx, xxx xxxxxxx xxxxxx xxx xxx xxxxxxxxxxx

7 xxxxx -- xx xxxxxxxxxxx xxx xxxxx; xxx xxx xxx xxx --

8 xxxxx x xxxxxxx xxxxx xxxxx xxx xxxxxxx xxxxxxxxxxx xx

9 xxxxxxx xxxxx x xxxxxxxxxxxxx; xx xxx xxxxxxx?

10 A. xxx.

11 Q. xxxxxx xxx xxxxxxxxxxxxxx xxxxxxx xxxxxxx

12 xxxxxxxxxxx xxx xxxxxxxxxxxxxx xxxxxxx?

13 A. xxxxx xxxxxx xxxxxxx xx xxxxxxxxxxxxxxx, xxxxxx xxx

14 xx xxxxx xxxxx xxxxx xx xx xxxxx xxxxxxx, xxxxx xxx xxxxx,

15 xx xxxxxx xxxxx xx xx xxxxxx xxx xxxxxxxxxxx xxxxx. xxx

16 xxxxxxxxxxx xxxxxxx xxxxx xxxxxxxxxxx xxxxxxx xx xxxxxxx

17 xxxxxxx, xxxxxxx xxxxx xxxxx xx, xxxxxxx xxxxxxx, xxx xx

18 xxxxx x xx-xxxxxx xxxxxxx xx xxxxxxx xx, xxx xxxxxxxxxxxxx,

19 xxx xxx xxxxxxx, xxxxxx xx xxxxxx xxxxxx xxxxx xxx xxx

20 xxxxxxxxxxx xxxxx xxx xxxxxxxxxxx xxx xx xxxxxx xx xxxxx

21 xxxxxxxxxxx xxxxxxxxxxx xxxxxx, xxxxxxxxxxx xxxxxxxxxxx.

22 Q. xx xx x xxxxxxxxxxx xxxxxxxxxxx, xxxxx xxx xxx xx

23 xxxxx xxxxxxxxxxx xxxxxx xxxxxxxxxxx xxxxxxxxxxx xxxxx xxxxxx,

24 xxxxx xx xxxxx xxxxxxxxxxx xxx xx xxx xxxxxxxxxxx xxx xxx?

25 A. xxx.

1 Q. All right.

2 A. Some of them do.

3 Q. They don't all stand passively and allow you
4 to put them in handcuffs; correct?

5 A. Not all of them, no.

6 Q. xxx xxx xxx xxxxxxxxxxx xx xxxx xxxx xxxx
7 xxxxxxxx xxx xxx xxxx xx xxx xxx xxxx xx xx xxxx?

8 A. xxx, xxxxxx xxxxxxxx.

9 Q. xxx xxxxx. xxx xxxxx xxxx -- xxx x xxxx xx
10 xxxx xx xxxxxxxxxxxxxxx xxxx -- xxxx xx xx xxxxx-xxxxxxxxxxxx
11 xxxxxxxxxxx xx xxxxxx xxxxxxx xxx xxxxxxx xx xxxxxxxxxxx
12 xxxxxxxxxxx.

13 xxxxx xx xxx xxxxx xx "xxxxxxxxxxxx xxxxxxxxxxx"?

14 A. xxxxxxxxxxx xxxxxxxxxxx xxxxx xx xxxxxxxxxxx xxxxx
15 xx xxxxx xxxxxxxxxxx xxxxxxx xxxxxxxxxxx xxxxx xx xxx xxxxx
16 xxxxx xxxxxxx, xxxxxxx xxxxx, xxxxx xxxxxxxxxxxxxxx xxxxx,
17 xxxxxxxxxxx xxxxx, xxxxxxx xxxxx, xxxxxxxxxxx xxxxx, xxxxxxx
18 xxxxx. xxxxx xxxxxx xxx -- xxxxx xxx xxx xxxxxxxxxx xxx
19 xxxxx.

20 Q. xxx xxxxx. xx xxxxx xxx xxxxx xxxxxxx xxx
21 xxxxxxxxxxx xx xxx xx xxxxx xxxxx xx xxxxx xxxxx xx xxx xxxxx
22 xxx?

23 A. xxxxxxx.

24 Q. xxx xxxxxxx xxx xxxxxxxxxxx xx xxxxx xxxxx? --

25 A. xxxxx.

1 Q. -- xx xxx xx xxxxxxxx xxxx?

2 xxxxxx xxx xxxxxxxxxx xx xxxxx xxxx?

3 A. xx.

4 Q. xxx xxx xxxxxxxxxx xx xxxxx xxxx?

5 A. xx.

6 Q. xxxxx xxxx?

7 A. xx.

8 Q. xxx xxxxx. xxxxx xxx xxx xxxxxxxxxx xx xx?

9 A. xxxxx xxxxxxxxxx xx xxxxx xx xx xxxxx xxx
10 xxxxxxxx xx xxx xxxxx xxxxx xxxxxxxx xxxxx xxxxxxxxxx,
11 xxxxxxxxxx xx xxxxx xx xx xxxxx xxx xxx xxxxx xxxxx x
12 xxxxxxxx, xxxxx xx xxx xxxxx xxxxx xx xx, xxx xxxxx
13 xxxxxxxx xxx xxxxx xxxxx xxxxx xxxxxxxxxx xxxxx xxx xxx xxxxx
14 xxxxx xxxxxxxxxx.

15 Q. And from what you've seen of this video, does
16 that appear to be what Mr. Pavey was attempting to
17 do?

18 A. Yes.

19 Q. xx xx xxxxx xx xxx xxxxxx xxxxx xxx xxxxx xxxxx
20 xxx xxx xxx xxxxx xx xxxxxxxx xxx xxxxxxxxxx, xxxxx xxx
21 xxx xxxxxxxxxx xx xx?

22 A. xx xxxxxx xxx xxxxx xx xxxxxxxx xxx xxxxxxxxxx,
23 xxx xxxxxx xx xxx xxxxxxxxxx xxxxx, xxxxx xx xxx xx xxx
24 xx xxx xxxxx xxxxxx.

25 Q. xxx xxxxx xx xxx xxx xxxxx?

1 A. xxx.

2 Q. Which is what they're trying to do anyway?

3 A. Yes.

4 Q. And now, ma'am, in terms of the training that

5 xxxxxx xxxxxxxx xxx, xxx xxxxx xxxxxxx xxxxx xx xxxxxx

6 xxxxxxxx. xx xxxx -- xxx xxxx xxxxxxxx xxxx xxxx

7 xxxx-xxxxxxx xx xx-xxx-xxx-xxxx xxxxxxxx?

8 A. xxx xxxxx xx xxxxxxxx xx xxxxxxx xxxxx xxxxxxxx

9 xxxxxxxx xxx xxxxx xxxxx xx xxxxxxxx xx xxxxxxxxxxxxxx

10 xxxxxxxxxxxxxxx xxxxx -- xxx xxxxx xxxxx xx xxxxx x xxx

11 xx xxx xxxx-xxxxxx xxxxxxx -- xxx xxxxx xxxxxxxx

12 xxxxxxxx. xx xxx xxxxxxxxxxx xxxxxxxx xxxx, xxxx

13 xxxxxxx xxxxxxx.

14 Q. As his supervisor, did you observe Mr. Pavey
15 in doing his job? In other words, Mr. DeMuro had
16 asked if you actually saw a written certification that
17 he was authorized as an APS to make apprehensions and
18 I think you said you did not.

19 Did you observe him to tell that he had been
20 trained to do that job?

21 A. Yes. I was on apprehensions with Stacie in
22 the past.

23 Q. All right. And did he act according to
24 Target policy?

25 A. Absolutely.

1 MR. RICHARDS: I don't think I have
2 anything further, Your Honor.

3 **REDIRECT EXAMINATION**

4 **BY MR. DEMURO:**

5 Q. Really you've been with Mr. Pavey on his
6 apprehensions in the past and you testified that he
7 followed Target's policies --

8 A. Yes.

9 Q. -- in this case?

10 A. Yes.

11 Q. All of Target's policies with respect to
12 apprehensions?

13 A. Yes.

14 Q. Now, you mentioned that most shoplifters
15 flee -- want to flee when they get caught; correct?

16 A. Yes.

17 Q. xxxxx xxxx xxx xxxxxxx xxx x xxxxxxx xxxx xxxx
18 xxx xxxxxxxx x xxxxxxxxxxx, xxx xxxx xx xxxxxxxx xxxx
19 xxxx xxx xxxxx?

20 A. xxxx xxx xxxx xxxxx, xxx.

21 Q. All right.

22 MR. DEMURO: Turn to Exhibit 63,
23 Ms. Wilson, Plaintiff's Exhibit 53 -- 63. Okay.
24 Don't put it up.

25 MR. RICHARDS: That's not been admitted.

1 MR. DEMURO: You can go ahead and take
2 that down.

3 Q. (BY MR. DEMURO) Turn to Exhibit 63,
4 Ms. Plonczynski, and look at page 4 of Exhibit 63.

5 Isn't that the Target policy that
6 dictates -- or strike that.

7 Isn't that the Target policy that talks about
8 how an approach to a shoplifter should be made?

9 A. Yes.

10 Q. And isn't that the policy that was in effect
11 at the time of this stabbing?

12 A. Yes.

13 Q. Okay.

14 MR. DEMURO: Your Honor, at this time
15 I'd move into evidence Plaintiff's Exhibit 63-4.

16 MR. RICHARDS: We offer the same
17 objections. It precedes the point of Mr. Therrien's
18 involvement.

19 THE COURT: Sustained.

20 MR. DEMURO: May I make an offer of
21 proof or be heard on that?

22 THE COURT: You can make an offer of
23 proof. I think the document speaks for itself, but
24 you can say whatever you'd like to on it.

25 *(Bench conference outside the hearing of the jury)*

1 MR. DEMURO: Mr. Richards has just
2 opened the door. He just asked this witness on two or
3 three times whether she followed -- Target followed
4 their policies with respect to the whole apprehension
5 process. He didn't limit it to when it happened, when
6 the fight started. And now it's inherently unfair,
7 Your Honor, to limit me to rebut that.

8 They didn't follow their policies with
9 respect to apprehensions, and now the jury has
10 evidence that they did because Mr. Richards opened the
11 door. In fundamental fairness, I've got to be able to
12 get this evidence in now.

13 THE COURT: Counsel?

14 MR. RICHARDS: Your Honor, first of all,
15 I didn't open the door. The question was asked in
16 response to Mr. DeMuro's suggestion that Stacie Pavey
17 was not, in fact, certified to conduct apprehensions.

18 The question that I asked was whether she had
19 observed him to see if he appeared to have been
20 trained in that. She volunteered, in response to
21 that, that yes, she had been on apprehensions with him
22 before. Mr. DeMuro then questioned her about whether
23 he had followed the policies. That doesn't open the
24 door.

25 THE COURT: Objection sustained. You

1 can make your offer of proof.

2 MR. DEMURO: My offer of proof would be
3 this particular exhibit that I'm on right now.

4 *(Bench conference concluded)*

5 Q. (BY MR. DEMURO) The fact that shoplifters
6 always flee is one of the reasons why your policies
7 say it's always safer to do it with two people too;
8 correct?

9 MR. RICHARDS: Your Honor, I object;
10 same basis.

11 THE COURT: Sustained.

12 Q. (BY MR. DEMURO) xxx, xxx xxxxxxxxxxx xxx
13 xxxxxxxxxxx xxxxxx xx xxxx xx xxx xxxxxxx xx xxxxxx
14 xxxxxxx xx -- xxx xxxx xxxxxxxxxxxxxx xxx xx xxxxxx
15 xxxxxxx xx xxx xxx xxx, xxx xxxxxxx xxx xxx xxx xxx
16 xx; xxxxx?

17 A. It's that person's judgment who's making the
18 apprehension, yes.

19 Q. xxx xx xxxx xxxxxxx xxxxxxxxxxx xxxxxxx xxxxxxx
20 xxxxxxx, xxx xxxxx xx xxx xxxxx xx?

21 A. xxx.

22 Q. Because a few CDs isn't worth all of this, is
23 it?

24 A. No.

25 MR. DEMURO: May I approach the well,

1 Your Honor?

2 THE COURT: You may.

3 Q. (BY MR. DEMURO) I'm holding up part of
4 Exhibit 15. There's another individual who we haven't
5 spoke much about in this case but does appear on the
6 video at 2:07:27 p.m. That's Michael Hendricks;
7 correct?

8 A. Correct.

9 Q. He is a Target loss-prevention employee?

10 A. Correct.

11 Q. He was on the store premises that day but it
12 was an off-duty day for him; correct?

13 A. Correct.

14 Q. He just happened to be at the store?

15 A. Correct.

16 THE COURT: What was his name?

17 MR. DEMURO: Michael Hendricks.

18 Q. (BY MR. DEMURO) Now, Mr. Hendricks didn't do
19 anything to help that day, did he?

20 A. No.

21 MR. DEMURO: Thank you, Ms. Plonczynski.

22 No further questions.

23 MR. RICHARDS: No, Your Honor.

24 THE COURT: Ma'am, you may step down.

25 Call your next witness.

1 MR. DEMURO: The plaintiff would call
2 Scott Manley. With Your Honor's permission, I'll go
3 out in the hallway and get him.

4 THE COURT: You may.

5 SCOTT MANLEY,
6 *after having been first duly sworn, says in reply to*
7 *the questions propounded as follows, to-wit:*

8 DIRECT EXAMINATION

9 BY MR. DEMURO:

10 Q. Mr. Manley, could you please introduce
11 yourself to the jury?

12 A. My name is Scott Manley. My full name's
13 Douglas Scott Manley. I go by "Scott Manley."

14 Q. And where do you live, sir?

15 A. Chouteau, Oklahoma.

16 Q. XXX XXX XX XXX XXXX XXX?

17 A. X XXXXXXXX XXXXXX XXXXXXXXXXXX XXXXXXXXXXXX XX
18 XXX XXXXXXXXXXXX.

19 Q. And what does Sensormatic do?

20 A. We do shoplifting prevention such as security
21 cameras, EAS.

22 Q. XXX XXX XXXX XXXX XXX XXXX XXXXX XXXX XXXX XX
23 XXXX, XXX?

24 A. XXXXX XXX XXXXX.

25 Q. And what's your position with Sensormatic?

1 A. I'm a service tech.

2 Q. And over those ten years as being a service
3 tech, has the Target store, the Supercenter store on
4 71st Street in south Tulsa, been one of your clients?

5 A. Yes, sir.

6 Q. And in general, what does a service tech do?

7 A. We install, maintain, repair our equipment
8 that we sell.

9 Q. And is Target still one of your clients?

10 A. As far as I know, yes, sir.

11 Q. Okay. Now, were you in the store on June 5,
12 2005 -- excuse me -- June 3, 2005?

13 A. I believe so. Are you referring to the date
14 of the incident?

15 Q. Yeah. Were you there when the people got
16 stabbed?

17 A. Yes, sir.

18 Q. Okay. And what were you doing there?

19 A. I believe I was there to look at some
20 equipment that was broken.

21 Q. And you were there right around 2:00 p.m.?

22 A. As far as the time frame, sir, I do not
23 remember.

24 Q. It was in the afternoon?

25 A. To be honest, I really don't know what time I

1 showed up there.

2 Q. Okay. Now, when you got there, who did you
3 meet and who were you working with?

4 A. I always check in with the AP that's on-site,
5 and I would have been working with one of the AP's.

6 Q. Okay. Did you work with Ms. Plonczynski at
7 all?

8 A. Who's Ms. --

9 Q. Ms. Plonczynski, Julie.

10 A. Julie, yes. I forgot her name. I
11 apologize.

12 Q. Didn't you see her that day?

13 A. Yes. I was walking the store with her.

14 Q. Okay. And what happened as you were walking
15 the store with Ms. Plonczynski?

16 A. Are you -- in what aspect are you referring
17 to as far as --

18 Q. What happened?

19 A. Oh. We were walking as far as -- what part
20 of the store, I don't know. But we were walking
21 towards some equipment to be looked at, and the only
22 thing I remember is she had to go and she took off.

23 Q. Well, you remember that there was a call on
24 her radio; right?

25 A. To be honest, I really wasn't paying

1 attention. All I know is she was gone.

2 Q. Okay. Are you saying, sir, that you don't
3 remember that she got a call on her radio when you
4 were walking with her?

5 A. I believe so. I mean, I'm -- I believe she
6 got a call and she was gone. I'll be honest with you;
7 it's vague.

8 Q. When you say "it's vague," you are sure that
9 you were walking with her on the sales floor and a
10 call came through on her radio; correct? You are sure
11 about that; right?

12 A. I'm pretty positive she got -- as far as from
13 what I remember -- and I apologize, it's been a long
14 time ago. I've had two kids during that time period
15 so I apologize.

16 We were walking the store and I believe she
17 got a call on the radio and she was gone, but I was
18 more interested on what was going on with the
19 equipment, I believe.

20 Q. All right. We'll get to that in a minute.

21 Do you remember giving your deposition in
22 this case?

23 A. Yes, sir.

24 Q. And that wasn't that long ago. It was March
25 26, 2008; correct?

1 A. If that's what you say, yes.

2 Q. And you remember Mr. Vanderhoof took your
3 deposition?

4 A. Yes, sir.

5 Q. And you remember him asking you, how did you
6 become aware of the stabbing?

7 A. I believe, yes, sir. I don't recall
8 everything to that -- to the degree of my deposition
9 to be honest.

10 Q. But you recall him asking you that question?

11 A. Vaguely.

12 Q. Let's see if I can help you refresh your
13 recollection.

14 A. Okay. Thank you very much.

15 THE COURT: Counsel, do you have a line
16 and page?

17 MR. DEMURO: I do, sir, if you'll give
18 me a moment.

19 A. Okay.

20 Q. (BY MR. DEMURO) Now, if you'll look at page
21 43 -- excuse me -- page 44, line 1.

22 "QUESTION: And how did you become aware
23 of -- through Julie, I'm assuming -- well, how did you
24 become aware of the stabbing through Julie?

25 "ANSWER: Correct.

1 "How did you become aware?

2 "ANSWER: Via the radio."

3 Do you see that?

4 A. Yes, sir, I do.

5 Q. Okay. So isn't it true -- and we can go
6 through some more of this -- that you were walking
7 with Julie on the sales floor when she got a call on
8 the radio that told her she needed to go to the front
9 of the store?

10 A. Yes, sir.

11 MR. DEMURO: No further questions.

12 **CROSS-EXAMINATION**

13 **BY MR. RICHARDS:**

14 Q. Mr. Manley, there's evidence in this case,
15 one of the exhibits, that indicates that on that day
16 there was something called a VM-96 matrix switcher
17 that was down, that wasn't working.

18 Is that the type of thing that you would have
19 fixed?

20 A. Yes, sir, it is.

21 Q. Now, do you have any recollection why you
22 were out there to make repairs that day?

23 A. No, sir, I really don't.

24 Q. Okay. Or what it was you were going to
25 fix?

1 A. No, sir. I apologize.

2 Q. That's okay. But if the VM-96 was broken,
3 then that's the type of thing that you would have been
4 called out to take care of; right?

5 A. Yes, sir.

6 Q. And that's the thing that controlled all of
7 the VHS cameras; right?

8 A. Yes, sir.

9 Q. VHS being what -- they've been called analog
10 or VHS. Not the digital stuff; is that right?

11 A. The VM-96 is what provides the video to -- I
12 guess all the video comes into the VM-96, then goes
13 out to the other monitors which goes to VHS tapes --

14 Q. Okay.

15 A. -- to be more correct, I guess.

16 Q. So if the VM-96 is broken, it's like the
17 switch is off between the cameras and the monitors?

18 A. The recording devices, yes.

19 Q. Okay. It's why you do what you do and I
20 don't.

21 A. I apologize.

22 Q. It's all right. Now, sir, that VM-96 that
23 was broken would have been in the asset-protection
24 office, wouldn't it?

25 A. Yes, sir.

1 Q. All right. Now, let me ask you, sir: Do you
2 recall when you --

3 MR. RICHARDS: And if we could bring up
4 how about 2:07:14, please.

5 Q. (BY MR. RICHARDS) Is that fella in the white
6 shirt with the sunglasses you?

7 A. Yes, sir, I believe that would be me.

8 MR. RICHARDS: You might back it up one.
9 That's a little better. And another one.

10 Q. (BY MR. RICHARDS) Now, is that better?

11 A. Yes, sir, I do believe that would be me.

12 Q. Is that about the time that you got there?

13 A. I apologize. I --

14 Q. That's all right. In any event, that's about
15 the time we first have a picture of you?

16 A. Okay.

17 Q. Now, when you arrived, or at least at some
18 point while you were there, you saw Mr. Therrien;
19 correct?

20 A. Who?

21 Q. Mr. -- the fella here, one of the fellas that
22 had been stabbed.

23 A. Yes, sir.

24 Q. Do you remember seeing him?

25 And what do you remember him doing when you

1 saw him?

2 A. I seen him basically when I was following --
3 not really following Julie -- but I was heading up
4 towards the front. I seen the gentleman and he was
5 just -- I don't know how to -- acting kind of radical
6 -- not -- just kind of erratic and he was holding his
7 side, and he was screaming that somebody was in the
8 vestibule, or yelling that somebody was in the
9 vestibule stabbed, I think.

10 Q. Okay. When we took your deposition, you used
11 a particular expression, that he looked like a chicken
12 with his head cut off.

13 A. Yeah. He looked like a chicken with his head
14 cut off. I apologize.

15 Q. And is that your recollection of how he was
16 acting when you saw him that day?

17 A. Yes, sir.

18 MR. RICHARDS: I don't have any further
19 questions, Your Honor.

20 **REDIRECT EXAMINATION**

21 **BY MR. DEMURO:**

22 Q. You mean that he was acting like a chicken
23 with his spleen cut?

24 A. No, sir. Like a chicken with his head cut
25 off.

1 Q. Now, when you heard this radio call come in,
2 you were walking on the sales floor, as you said in
3 your deposition, not in the office; correct?

4 A. Correct.

5 MR. DEMURO: No other questions, Your
6 Honor.

7 THE COURT: Further questions?

8 MR. RICHARDS: No, Your Honor.

9 THE COURT: May this witness be excused,
10 plaintiff?

11 MR. DEMURO: Yes, Your Honor.

12 THE COURT: Defense?

13 MR. RICHARDS: Yes, Your Honor.

14 THE COURT: Sir, thank you for your
15 testimony. You may step down. You may be excused.

16 THE WITNESS: Thank you.

17 THE COURT: You may call your next
18 witness.

19 MR. DEMURO: Your Honor, at this time
20 the plaintiff, with the court's indulgence, would like
21 to play the already admitted videotape -- thank you,
22 sir -- of Dr. Traub, the treating physician for
23 Mr. Therrien.

24 THE COURT: Let me see counsel just a
25 minute.

1 MR. DEMURO: Yes, sir.

2 *(Bench conference outside the hearing of the jury)*

3 THE COURT: Just out of an abundance of
4 caution from the court, there's no objections and
5 everything's been ruled on and it's ready for jury to
6 see?

7 MR. RICHARDS: We've worked out all
8 objections and parts that should be redacted so it
9 is -- it's --

10 THE COURT: You may proceed.

11 MR. DEMURO: At least there's one piece
12 of evidence we worked out and agreed on, Your Honor.

13 THE COURT: Okay.

14 *(Bench conference concluded)*

15 MR. DEMURO: Your Honor, at this time I
16 would like to present to the jury the videotaped
17 deposition of Dr. Traub, who was the pain-management
18 physician who treated Mr. Therrien after his surgery.

19 I warn the jury, it's a little bit more
20 lengthy than it should be, probably about a half an
21 hour, give or take.

22 THE COURT: Does counsel have any
23 objection to the court reporter not taking --

24 MR. DEMURO: I'll relieve the court
25 reporter of his duty to take down the transcript.

1 MR. RICHARDS: We have no objection.

2 THE COURT: You may proceed.

3 *(The videotaped deposition of Dr. Traub is shown)*

4 MR. DEMURO: Your Honor, if I can
5 interrupt, it looks like we have a little technical
6 glitch with an edit that was made. We've viewed this
7 video before. I'm sure it's just something that can
8 be worked out very quickly. Never mind.

9 I was saying I think with Your Honor's
10 indulgence, I can take a short break to clean this
11 technical problem up.

12 THE COURT: We will be in recess
13 probably 15 minutes. Remember my admonition not to
14 discuss it with yourselves, allow anyone else to
15 discuss it with you.

16 Ask everyone to please remain seated as the
17 jury leaves the courtroom.

18 *(The jury exits the courtroom)*

19 THE COURT: Let the record reflect the
20 jury's departed the courtroom. How much more time is
21 there?

22 MR. DEMURO: Well, not much, Your Honor.
23 After we present this video, if I may approach.

24 THE COURT: You may. No. I mean, how
25 much more video?

1 MR. DEMURO: Oh, I think there's
2 probably fifteen minutes or ten. Ten minutes.

3 THE COURT: Okay.

4 MR. DEMURO: Thereabouts. I'm following
5 through on the transcript.

6 THE COURT: Okay. We'll be in recess
7 for about fifteen minutes.

8 *(Short break)*

9 THE COURT: You may proceed.

10 MR. DEMURO: Your Honor, we --

11 THE COURT: Let the record reflect the
12 jury's in the box, parties are present with counsel.

13 You may now proceed.

14 MR. DEMURO: Your Honor, Ms. Wilson, my
15 assistant, has worked out the problems and we're ready
16 to go.

17 THE COURT: Okay.

18 MR. DEMURO: I thought as a housekeeping
19 matter, Your Honor, this might be an appropriate time
20 to enter into the record the transcript of the video
21 that we've been watching of Dr. Traub so the record
22 has that transcript.

23 THE COURT: You may.

24 MR. DEMURO: And that has been marked as
25 Plaintiff's Exhibit 83.

1 May I approach and hand it to your bailiff?

2 THE COURT: You may. I assume there's
3 no objection; is that correct?

4 MR. RICHARDS: None, Your Honor.

5 THE COURT: Eighty-three admitted
6 without objection.

7 MR. DEMURO: And just so everybody
8 knows, there's probably about 13, 14 minutes left.

9 THE COURT: Okay.

10 *(Video continued for the jury)*

11 MR. DEMURO: Your Honor, that's
12 obviously the end of the video.

13 At this time I have that issue to present to
14 the jury that we talked about before with respect to
15 the prior consistent statement that I'd like to
16 present.

17 *(Bench conference outside the hearing of the jury)*

18 MR. DEMURO: This is the prior
19 consistent statement of Mr. Therrien at the
20 hospital.

21 THE COURT: The television reporter?

22 MR. DEMURO: Yes, sir. And I've got a
23 transcript of the brief clip -- literally, it's two
24 lines long -- that we can excise and play. I've
25 showed it to Mr. Richards.

1 THE COURT: Do you have any objection?

2 MR. RICHARDS: Well, I do, your Honor.

3 It's basically the same objection I made earlier.

4 This was five days after the incident. If there's

5 anything played, though, certainly I think this is the

6 sentence that he's speaking of. I think it should

7 begin "so I" because this first portion doesn't have

8 anything to do with whether there was a call for help

9 or not.

10 THE COURT: Okay. Not okay good, but I
11 understand.

12 MR. DEMURO: I don't think it's possible
13 to really excise out that sentence and make it one
14 phrase excised from the other.

15 THE COURT: Let me back up a step.

16 Your support, legal support, for doing it is
17 what?

18 MR. DEMURO: Yes, Your Honor. It's rule
19 81(d)(1)(B), consistent statement intended to rebut an
20 expressed or implied charge of recent fabrication.

21 The defendant continues to persist that
22 Mr. Therrien lied when he said that he was asked for
23 help. So now that Mr. Pavey asked for help, he
24 intends to, I think, get on another witness to say
25 that. So now it's a credibility issue, Your Honor.

1 It doesn't go to the duty question.

2 If they attack his credibility, which they
3 have, I am entitled to rehabilitate. The rule that
4 I've just cited is the rule that permits me to do
5 that. I've met all the foundational requirements
6 under that rule.

7 MR. RICHARDS: Your Honor, to the extent
8 that what's played deals with whether -- with him
9 stating he was surprised there was any backup, that
10 clearly is something that should not come in.

11 If it's admissible at all as a prior
12 consistent statement, it should simply be the second
13 half of the phrase. If it can't be edited so to play
14 the portion as the prior consistent statement, it
15 shouldn't be played.

16 THE COURT: Well, is it significant?
17 I'm still confused about how you plan to present it to
18 the jury.

19 MR. DEMURO: I can do that one of two
20 ways. I can recall Mr. Therrien and authenticate it
21 that way, but I don't think there's an issue about the
22 authenticity, so I think that Mr. Richards will permit
23 me just to play it, if it was admissible, rather than
24 going through it.

25 So technically, I'm asking to reopen -- not

1 to reopen -- but to recall Mr. Therrien for that
2 limited purpose, but I don't think we have to do that
3 procedurally.

4 MR. RICHARDS: I would agree that if
5 it's allowed, it can just be played. He doesn't need
6 to put Therrien back on the stand.

7 THE COURT: So is it set up in a TV news
8 format?

9 MR. DEMURO: I don't think you -- you
10 may see a news insignia, but you don't see a reporter
11 in the clip, you don't hear the reporter, all you hear
12 is the statement.

13 THE COURT: He made the statement --

14 MR. DEMURO: Yes, sir.

15 THE COURT: -- live? Well, what would
16 have been live TV then?

17 MR. DEMURO: Yes, sir. I'm sorry. Go
18 ahead.

19 MR. RICHARDS: He was being videoed.

20 MR. DEMURO: Yes. While he was still in
21 the hospital.

22 THE COURT: Okay. Now, do you have --
23 any on the defense side, is there any objection, and
24 what's the basis of your objection?

25 MR. RICHARDS: Well, the objection is

1 twofold. First of all, that it's -- I think it's a
2 collateral issue, although it is correct that I do
3 intend to present additional witnesses as to the
4 affect that he did not make a statement to the police
5 officer in the emergency room the day of this incident
6 when he was asked to help. And then, of course, Lisa
7 Kreps will testify that she told him not to go over
8 there and heard Stacie Pavey yell back.

9 The second objection is to the first portion
10 of the statement which deals not with whether he heard
11 a call for help, but his surprise that there
12 wasn't -- that Stacie Pavey didn't have backup, which
13 is an issue that the court said is not admissible
14 here.

15 MR. DEMURO: May I briefly --

16 THE COURT: Why if this is -- why
17 wouldn't it be appropriate in rebuttal, if it's
18 appropriate at all? What's the -- let me see the
19 rule.

20 MR. DEMURO: Your Honor, I think it
21 would be appropriate in rebuttal. I think it
22 requires -- as I understand it, Your Honor, the
23 foundational requirements are once the credibility has
24 been attacked, and so I couldn't do it initially with
25 Mr. Therrien because he had not yet been attacked.

1 Mr. Richards attacked Mr. Therrien's credibility on
2 this point through Mr. Pavey's testimony.

3 THE COURT: And you're saying
4 801(d)(1)(B)?

5 MR. DEMURO: Yes, sir.

6 THE COURT: Doesn't (B) say, "consistent
7 with the declarant's testimony and is offered to
8 rebut"?

9 MR. DEMURO: That's right. Consistent
10 with his testimony at trial. This is a prior
11 consistent statement.

12 So the declarant makes the statement at trial
13 that the light is green.

14 Then the opponent says, no, no, didn't you
15 say the light was red at such and such a time?

16 And then I can come back and say, no, wait a
17 minute. Before that, I made a consistent statement
18 that the light was green to prove that I didn't
19 fabricate --

20 THE COURT: The statement was made
21 before the statement he testified about on direct?

22 MR. DEMURO: Right.

23 MR. RICHARDS: Your Honor, the problem
24 is, we're not saying that Mr. Therrien ever made a
25 statement -- an extrajudicial statement or a statement

1 under oath that he did not here recall. I mean, he's
2 testified here he recalled. It's disputed whether
3 that happened, but, I mean, essentially our evidence
4 is that are two different versions of what happened
5 and the jury is going to have to decide who they
6 believe. I don't know that's suggesting that someone
7 has recently fabricated something.

8 MR. DEMURO: He's put on three
9 witnesses -- three different witnesses --

10 THE COURT: Now, this is your case. You
11 put them on and he cross-examined them. Let's be sure
12 the record is real clear. This is your case, they
13 were your witnesses, and they were cross-examined.

14 MR. DEMURO: Correct. He's getting
15 ready to put on two other witnesses that are going
16 to --

17 THE COURT: Now, I understand that. I
18 mean, I think this is -- I'm still listening to you
19 but I think it's more entertainable as rebuttal but
20 I'm --

21 MR. RICHARDS: Let me -- just to save
22 time, Judge, I would tell you that if the court is
23 inclined to allow it, I don't have a problem with the
24 timing now as opposed to after --

25 THE COURT: Let's put it on.

1 MR. RICHARDS: But I do have a problem
2 with the first part of it.

3 THE COURT: Well, I do too. I thought
4 we had a concession that you weren't going to put the
5 first part of -- tell me exactly what you're going to
6 put in.

7 MR. DEMURO: I don't think I can edit
8 that sentence effectively without it being garbled,
9 but I wouldn't object, in consideration of your prior
10 ruling, to instruct them that they're to disregard the
11 first part of the sentence.

12 MR. RICHARDS: Well, can she turn the
13 sound off on the first part and do it herself?

14 THE COURT: Can she do that?

15 MR. DEMURO: Sure.

16 THE COURT: Check and see. I want to
17 see. Let me see that just a minute. I want your
18 copy.

19 *(Discussion held off the record)*

20 THE COURT: I know -- I have confidence
21 that you know how you're setting this up, but, I mean,
22 how are you going to introduce it to the jury?

23 MR. DEMURO: Again, with Mr. Richards'
24 consent, I would just say this -- Your Honor, I'm
25 going to present a video of the statement Mr. Therrien

1 made while he was in the hospital.

2 MR. RICHARDS: I think you need to give
3 them the date.

4 THE COURT: You need to give them the
5 date.

6 MR. DEMURO: Thank you.

7 THE COURT: Okay. Let's go with that.

8 MR. DEMURO: Okay. Your clerk is
9 checking on the technical part.

10 THE COURT: Okay.

11 MR. RICHARDS: I understand that he's
12 going to rest after this. Will we have an opportunity
13 to make a record?

14 THE COURT: Yes, yes. I plan
15 to -- yeah. What is it, four o'clock?

16 MR. RICHARDS: Yes, sir.

17 THE COURT: When he rests, we'll make a
18 record and --

19 MR. RICHARDS: I've got a brief witness
20 and a long one, both standing by, so I think I'd like
21 to get the brief guy on and off because I'm paying him
22 to be here.

23 THE COURT: I'm planning to quit earlier
24 today than usual. So when you get through, I'll let
25 you make a record and we'll let the jury go and come

1 back in the morning.

2 MR. RICHARDS: Okay. So I need to have
3 my witness come back tomorrow?

4 THE COURT: Yeah.

5 MR. RICHARDS: May I have Jason tell
6 him?

7 THE COURT: You may.

8 MR. RICHARDS: Judge, in light of as
9 much problems as this is becoming, if we could just
10 play it and maybe you could say to disregard the first
11 part of it.

12 THE COURT: Okay. Let's go. Give me
13 one of those.

14 *(Bench conference concluded)*

15 THE COURT: Counsel, you may proceed.

16 MR. DEMURO: Thank you, Your Honor. And
17 I appreciate the jurors' patience and the court's
18 patient on this.

19 Your Honor, at this time plaintiff will
20 present a statement made by the plaintiff in the
21 hospital on June 8, 2005.

22 THE COURT: You may proceed.

23 MR. DEMURO: That's marked as
24 Plaintiff's Exhibit 17. Try it again. There was no
25 audio.

1 MR. RICHARDS: Could I make a
2 suggestion? Maybe Mr. DeMuro could read it to the
3 jury and we could agree that that's what he's
4 saying.

5 MR. DEMURO: That's fine, your Honor.

6 THE COURT: Well, let me get both of you
7 up here and make sure we have an agreement before we
8 start reading.

9 *(Bench conference outside the hearing of the jury)*

10 THE COURT: Okay. So we get it right, I
11 think you ought to be able to tell the jury what this
12 is and he's in the hospital.

13 MR. RICHARDS: That's fine.

14 THE COURT: And the date. And then
15 you're going to read what?

16 MR. DEMURO: I'll just read it now so we
17 can avoid any problems. I'll just read, "So I went
18 out there and he said, 'Help me.' So I did."

19 THE COURT: Okay. That's it.

20 MR. DEMURO: May I play the video
21 without the sound so they see that he was in the
22 bed.

23 THE COURT: That's fine. That's fine.

24 *(Bench conference concluded)*

25 THE COURT: Members of the jury, we

1 haven't talked to the technicians but here's the
2 solution.

3 We're going to attempt to play the video so
4 it gives some demonstration of who the witness is.
5 You may have caught a glimpse of it earlier but we're
6 going to try it show that again. Counsel is going to
7 read a very short statement which depicts what the
8 witness said.

9 I'LL give Mr. DeMuro a chance to speak on
10 behalf of his client.

11 MR. DEMURO: Thank you, Your Honor.
12 Plaintiff will present a short statement that was made
13 by Mr. Therrien while he was in the hospital on June
14 8, 2005, to a news interviewer about the circumstances
15 of the stabbing.

16 Go ahead and play the video, Ms. Wilson. No
17 sound.

18 The statement was, "So I went out there and
19 he said, 'Help me.' So I did."

20 With that, Your Honor, the plaintiff rests.

21 THE COURT: Okay. Thank you.

22 Members of the jury, we're going to recess
23 for this evening. I'll ask you to be back in the
24 morning at nine o'clock.

25 There are issues that the court needs to take

1 up outside the hearing of the jury that has to do with
2 this case. So rather than have you wait in the jury
3 deliberation room, I thought it would be best if I
4 allowed you to go home early. I've robbed you of 15
5 or 20 minutes so I'll give you back 45 now. So we'll
6 see you in the morning at nine o'clock. Remember my
7 admonition not to discuss this matter among yourselves
8 or allow anyone else to discuss it with you.

9 Everyone please remain seated as the jury
10 leaves the courtroom.

11 *(The jury exits the courtroom)*

12 THE COURT: Let the record reflect the
13 jury has departed the courtroom. The parties are
14 present with their clients.

15 Anything on behalf -- further -- as I
16 understand it, the plaintiff has rested. Do you want
17 to check with the clerk to be sure you have all your
18 exhibits in that you think you have in before you
19 announce rest? I know you've indicated that but you
20 may check with the clerk if you have any concerns.
21 I'm not suggesting you should but want to give you the
22 opportunity to be sure you have everything in that you
23 think you have.

24 MR. DEMURO: I would like to do that,
25 Your Honor. I would also like to make an additional

1 offer of proof before we formally rest. I didn't want
2 to interrupt as much as I already had been
3 interrupting.

4 THE COURT: No. You may.

5 MR. DEMURO: It's a written offer of
6 proof entitled, "Facts pertaining to the
7 apprehension."

8 THE COURT: You want to speak from that
9 podium.

10 MR. DEMURO: Yes, sir.

11 THE COURT: I'll hear you on your offer
12 of proof.

13 MR. DEMURO: This offer of proof is
14 called, "Facts pertaining to the apprehension." It's
15 self-explanatory. It includes a time line of some of
16 the facts that Your Honor excluded. And I'd like to
17 offer it in its form -- in its written form right
18 now.

19 THE COURT: Counsel familiar with the
20 offer?

21 MR. DEMURO: Yes.

22 MR. RICHARDS: Can you get me a copy of
23 it at some point?

24 MR. DEMURO: Sure. There's nothing in
25 there that hasn't been provided to Mr. Richards.

1 THE COURT: Well, I accept your offer of
2 proof.

3 MR. DEMURO: May I approach and hand it
4 to the bailiff?

5 THE COURT: You may.

6 MR. DEMURO: Your Honor, I have an
7 assistant from my law office in the gallery. May she
8 approach the bench and hand me something?

9 THE COURT: She may.

10 *(Discussion held off the record)*

11 THE COURT: Mr. DeMuro, I think it's
12 plaintiff's exhibit, offer of proof, and there's a
13 time line, June -- is that part of it or is that a
14 separate offer?

15 MR. DEMURO: Well, it was supposed to be
16 attached to it, but I can certainly mark it as a
17 separate offer of proof.

18 THE COURT: No, that's fine. It was not
19 attached and I wasn't sure if you wanted to make any
20 special mention. We'll just attach it to the back of
21 your offer of proof. Is that satisfactory?

22 MR. DEMURO: That would be fine, Your
23 Honor.

24 THE COURT: Anything further from the
25 plaintiff?

1 MR. DEMURO: Nothing further, Your
2 Honor. The plaintiff rests.

3 THE COURT: Defense have anything?

4 MR. RICHARDS: Yes, Your Honor.

5 Your Honor, comes now the party corporation
6 defendant at the conclusion of plaintiff's case and
7 pursuant to Rule 50 of the Federal Rules of Civil
8 Procedure moves for judgment as a matter of law.

9 The court's order in limine, document No. 91,
10 indicated that the issue in this case was -- or that
11 the danger to the plaintiff arose at the point that
12 the plaintiff joined the altercation between Stacie
13 Pavey and the suspected shoplifter and that it was at
14 that point that a duty arose on the part of Target to
15 act reasonably to prevent injury to plaintiff.

16 The evidence in this case has been that
17 Mr. Pavey contacted the shoplifter in an attempt to
18 apprehend him and that subsequent to that,
19 approximately four seconds later, Mr. Therrien first
20 entered this exit vestibule where the altercation was
21 occurring.

22 According to the testimony of Mr. Pavey,
23 Mr. Therrien ran into the vestibule, at which point he
24 was told to back off. He nonetheless grabbed the
25 shoplifter's arm. The shoplifter then immediately

1 pulled a knife and stabbed Mr. Pavey. He then stabbed
2 Mr. Therrien, at which point Mr. Therrien and
3 Mr. Pavey both fell back upon being stabbed. Upon
4 being released after the stabbings, the shoplifter
5 immediately ran through the exit and out of the
6 building and the matter was over in seconds.

7 According to Mr. Therrien, he walked into the
8 vestibule after he noticed or heard or was -- it was
9 brought to his attention that there was some type of a
10 scuffle going on where he heard a call for help. He
11 positioned himself between Mr. Pavey and the
12 shoplifter and the exit from the store. He observed
13 what was going on, at which point he claims that
14 Mr. Pavey asked him for help.

15 In response, Mr. Therrien testified that he
16 engaged the shoplifter by punching him in the eye,
17 kicking him in an attempt to kick his legs out from
18 under him, at which point Mr. Pavey was stabbed and
19 went down, that he then got him in a choke-hold with
20 his left arm and choked him until he believed he had
21 gone limp and thought he had blacked out, at which
22 point he released the shoplifter.

23 Although he was being stabbed as he held the
24 gentleman in a choke-hold -- the shoplifter in a
25 choke-hold, upon releasing him the shoplifter turned

1 and stabbed him one last time and said, "That will
2 teach you to get involved."

3 At which point, according to Mr. Therrien,
4 Mr. Pavey moved between the shoplifter and
5 Mr. Therrien in an effort to protect him and the
6 shoplifter ran out the exit door.

7 Your Honor, under either scenario, there is
8 no evidence presented in this case that, first of all,
9 Target had time or the opportunity to act in a manner
10 to protect the plaintiff. This was an incident that
11 was over in a matter of seconds and the opportunity to
12 do something, to take some action, to protect
13 Mr. Therrien from the altercation that he decided to
14 enter into, simply did not exist.

15 But perhaps more importantly there's been a
16 complete absence of evidence from the plaintiff as to
17 what it was that Target failed to do, that it was
18 reasonably possible to do, in order to protect the
19 plaintiff after he entered into the altercation.

20 The plaintiff entered the fight, he became a
21 combatant, and Pavey was immediately stabbed and went
22 down. The question is, how could Target reasonably
23 act to protect Mr. Therrien in the seconds that the
24 incident lasted? There's simply been no evidence
25 whatsoever to suggest what Target failed to do. There

1 must be more than mere speculation for the plaintiff
2 to establish a legally cognizable claim against Target
3 under the law of the state of Oklahoma. And yet,
4 there is no evidence whatsoever upon which a
5 reasonable jury could find against Target on a legally
6 sufficient evidentiary basis.

7 Only as a product of the improper questioning
8 by counsel suggesting other bases upon which Target
9 should be liable, and testimony elicited on issues
10 which the court has excluded, could the jury possibly
11 find against Target.

12 But absent that, based upon the evidence of
13 what happened when Mr. Therrien entered that vestibule
14 and became a combatant in that altercation, based upon
15 that, there is simply no legally sufficient
16 evidentiary basis for an adverse verdict finding that
17 Target acted negligently in failing to protect
18 Mr. Therrien in the seconds that remained before the
19 altercation was over and the shoplifter ran out the
20 door.

21 So on that basis, Your Honor, under Rule 50
22 of the Federal Rules of Civil Procedure, Target moves
23 that the court enter a judgment as a matter of law in
24 this case and find for it. Thank you.

25 THE COURT: For the plaintiff.

1 MR. DEMURO: Your Honor, as a procedural
2 point, I'd like to make a motion to reopen my case for
3 the purpose of asking the court to reconsider its
4 rulings on the motions in limine in light of the
5 evidence induced at trial and in light of Target's
6 counsel's repeated questioning of his own witnesses to
7 the effect that Target complied with its own policies
8 and procedures with respect to the entire apprehension
9 process, a statement that he also made in his opening,
10 and on that basis I'm asking the court to reconsider
11 its motions in limine.

12 THE COURT: Overruled.

13 MR. DEMURO: Now, with respect to the
14 motion for a judgment as a matter of law under Rule
15 50, as I'm sure this court is aware, it is a very,
16 very difficult burden to reach. *Marquez v. City of*
17 *Albuquerque* is an example of a Tenth Circuit case on
18 this point, 399 F.3d 1216.

19 In weighing a motion of this type, the court
20 may not weigh the evidence, it may not assess the
21 credibility of any witness, it must indulge all
22 reasonable inferences in favor of the nonmoving party,
23 and it can only grant a motion if there's a complete
24 absence of evidence that would permit a reasonable
25 jury to find for the plaintiff, a very, very high

1 burden indeed.

2 I am mindful of the court's order.

3 Repeatedly the court has advised me that the scope of
4 the duty in this case has been narrowed to a very fine
5 level, but within that parameter, Your Honor, here is
6 where we are.

7 We know from the evidence that Mr. Therrien
8 turned around when a small child said, "Mommy, there's
9 a fight." We know that when he turned around and he
10 observed Mr. Pavey in a violent struggle, Mr. Pavey
11 was out of control of the situation. All reasonable
12 inferences in Mr. Therrien's favor has to be
13 established is true for purposes of this motion.

14 We know that Mr. Therrien took some number of
15 seconds to come to the altercation itself and that
16 when he arrived at the altercation, Mr. Pavey was
17 still trying to wrestle the shoplifter and still had a
18 hold of the shoplifter. And here is the critical
19 point with regard to Your Honor's order.

20 Mr. Pavey failed to let the shoplifter go at
21 the point in time that Mr. Therrien became involved.
22 Now, why is that significant?

23 Even under your very narrow order, Your
24 Honor, it's significant because every Target witness
25 xxxx xxxxxxxxxxx xxx xxxxxxxxxxx xxxx xxxxx xxxxxx xx xxxx

1 xx xxx xxx xxx xx xxxxxxxx xx x xxxxxxxxxx, xxxx xxx
2 xxxx xxxxxxxx xx xx xxx xxx xxxxxxxxxx xx xxxxxxx x
3 xxxxxxx xxxxxxxxxxxx xx xxxx xxxxxx xxx xx xxxxxxx xx
4 xxxxxxxxxxx xxxx xx xxx xxxxxxxx.

5 The evidence has been overwhelming --
6 overwhelming and undisputed that shoplifter resists --
7 Target knows this -- that shoplifters carry knives --
8 Target knows this -- and that this particular
9 shoplifter was a sophisticated criminal.

10 The breach, even in the few seconds that Your
11 Honor has given me to work with, those few seconds,
12 what Mr. Pavey did wrong was, number one, he didn't
13 let him go when he knew that Mr. Therrien was coming
14 to the altercation and when Mr. Therrien was at the
15 altercation. That's why I asked Mr. Pavey that
16 question twice, twice I asked him. So when
17 Mr. Therrien was at the altercation, did you have a
18 hold of the shoplifter? Yes. You didn't let him go,
19 did you? No.

20 That's a failure. It breaches Target's
21 policies enough to go to the jury. A reasonable juror
22 could easily conclude that if their policies
23 say -- could easily conclude that Mr. Pavey was not in
24 control of the situation. The video proves that.
25 Even he admitted that it wasn't an ideal situation as

1 far as he was able to give me.

2 So a reasonable juror could conclude easily
3 that he was out of control of the situation, and
4 Target's policies demand when they're out of control
5 of the situation to let the shoplifter go and he
6 didn't do that. Even if it wasn't two seconds or
7 three seconds, that's what he should have done. He
8 didn't do it. If he had let the shoplifter go,
9 neither one of them would have been stabbed.

10 That's the inference that I'm asking this
11 court to make in viewing all of the evidence in favor
12 of the plaintiff as it must in this standard --
13 underneath this standard.

14 Also, two other points. Number one, we have
15 evidence that Mr. Therrien -- or Mr. Pavey wasn't even
16 certified to make apprehensions. There's no record of
17 his certification. His own supervisor has never seen
18 a record of the certification. It's Target's policy
19 that they need to be certified in order to make
20 apprehensions. That is a defect that persisted. It
21 persisted before, during, and after Mr. Therrien got
22 involved, and a reasonable juror could consider that
23 as well when we get to breach and causation.

24 I know we've had a tussle on this third
25 point, which is they had inadequate people there.

1 They should have had somebody there -- somebody else
2 there. They know --

3 THE COURT: What Tenth Circuit law do
4 you rely on to support that theory?

5 MR. DEMURO: Which theory, Your Honor?

6 THE COURT: The one you just spoke
7 about, that they had to have people there.

8 MR. DEMURO: Well, I don't know that
9 there's a Tenth Circuit case that talks about the
10 level of security. But all the Tenth Circuit law that
11 I've looked at talks about the duty arising when the
12 imminent risk of criminal conduct is there and the
13 harm. The undisputed testimony is the risk of harm in
14 this case, as they admit, occurs at the time that you
15 know that you're going to apprehend a shoplifter.
16 That's when the risk of harm occurs.

17 And what are those risks? Those risks are he
18 could be carrying a knife, he could resist, it could
19 attract a customer, and a customer could get hurt.
20 And that's exactly what happened, exactly what
21 happened.

22 But I'm confident that the Oklahoma Supreme
23 Court under the *Taylor v. Henson* ruling, the Tenth
24 Circuit in this case --

25 THE COURT: Isn't it fair under these

1 facts that the imminent danger was not known until the
2 knife became an issue?

3 MR. DEMURO: Well, that's -- I disagree
4 that. The imminent danger was known the minute they
5 knew they were going to apprehend the shoplifter. And
6 then the imminent danger was known when they
7 decided --

8 THE COURT: Until a knife was evident,
9 which was in the midst of a struggle that would take
10 milliseconds, we're just talking about a scuffle.

11 MR. DEMURO: Well, Your Honor, we're
12 talking about --

13 THE COURT: When it became an imminent
14 danger is when there was a knife produced. Isn't that
15 correct?

16 MR. DEMURO: No. That's not correct at
17 all, no. There was an imminent danger by their own
18 testimony when they decided to stop, ambush from
19 behind, grab somebody leaving the store from behind
20 who was trying to fly and then he tried to get away.
21 That's when the imminent danger to the people around
22 them occurred.

23 The knife -- the pulling of the knife was a
24 manifestation of the risk that they created. That
25 would be like saying that you could do that with

1 somebody, then he pulls out -- you could tackle
2 somebody in the entranceway -- let me back up.

3 What Your Honor's order is saying, and
4 ruling, I think, means, is that Target has no duty at
5 all to use reasonable care in the manner in which it
6 apprehends a shoplifter. That's the affect of your
7 ruling, unless and until the shoplifter pulls a gun or
8 a knife and at that particular moment.

9 THE COURT: The case law says imminent
10 danger.

11 MR. DEMURO: And the imminent -- the
12 imminent danger is the danger of being involved in the
13 altercation if it goes bad.

14 THE COURT: Okay. You can go to the
15 next point.

16 MR. DEMURO: And so there are -- there
17 are those -- and I don't mean to reargue. I think
18 we're a little bit rearguing your motion in limine.

19 THE COURT: No, that's not what I'm
20 doing.

21 MR. DEMURO: But I think --

22 THE COURT: I think, Counsel, you have
23 been trying to do that, but I've ruled and I think
24 it's real clear.

25 MR. DEMURO: Well, what's real clear,

1 Your Honor?

2 THE COURT: The motion in limine. The
3 order that was issued as a result of the motion in
4 limine.

5 MR. DEMURO: So those are the breaches
6 that they -- that we have established in the evidence.

7 There's the other point that the shoplifter
8 did not stab Mr. Therrien until Mr. Pavey told him to
9 let the shoplifter go. And Mr. Therrien followed
10 Mr. Pavey's direction, let him go, and that's when he
11 turned around and was stabbed. If Mr. Therrien were
12 permitted to continue the hold, he may have subdued
13 him and the injury may never have occurred.

14 Now, that's something you have to consider a
15 hundred percent in our favor. So even in this
16 microsecond -- well, I think it's actually longer; I
17 think there's several seconds -- there's that fact as
18 well, that there's a breach of causation. I mean,
19 that establishes the causation between their duty to
20 reasonable care and the injuries that Mr. Therrien
21 suffered.

22 Under your narrow view, Your Honor, they
23 should have let him go, and when he pulled the knife,
24 they should have let -- they should have not
25 instructed Mr. Therrien to let him go at that time in

1 addition to all that I've said.

2 THE COURT: Counsel.

3 MR. RICHARDS: Your Honor, the essence
4 of plaintiff's argument is that plaintiff breached --
5 or Target breached a duty in not letting the
6 shoplifter go and yet Target breached a duty in
7 telling Mr. Therrien to let the shoplifter go.

8 The evidence was that Mr. Therrien was being
9 stabbed when he was holding the shoplifter. There's
10 no dispute that this was something that happened in a
11 matter of seconds. There's simply not a dispute.

12 What the problem is here is the question of,
13 you know, what was it that Target should have done but
14 did not do? That's what's unanswered by the evidence.
15 The answer now seems to be, well, Target should have
16 simply let the shoplifter go.

17 And yet, Target had a legal privilege under
18 the Oklahoma shopkeeper statutes to detain this
19 individual. There's no dispute that he was stealing
20 merchandise from Target. There's no dispute that
21 Oklahoma law under Title 22 gives Target a privilege
22 to detain this man.

23 Mr. Therrien interjected himself into this
24 situation. Releasing the shoplifter doesn't act to
25 protect Mr. Therrien, it simply releases the

1 shoplifter. And once again, it was after the
2 shoplifter was released, according to the plaintiff,
3 that he was stabbed. So that doesn't discharge a duty
4 to protect Mr. Therrien.

5 Your Honor, simply put, Rule 50 requires that
6 there be some evidence, some legally sufficient
7 evidence, upon which a reasonable jury can reach a
8 decision adverse to Target, and it simply is not here.

9 There's not been any evidence as to what
10 Target should have done but didn't do after
11 Mr. Therrien entered into this altercation in the few
12 seconds before it was over and, in fact, in the few
13 seconds -- in the less than few seconds from the point
14 that the knife was first brandished by the shoplifter
15 and Stacie Pavey was stabbed before this incident was
16 over.

17 In fact, once the knife was pulled, Mr. Pavey
18 was immediately stabbed. Because the only evidence is
19 that the first time it was ever seen was as he was
20 being stabbed, causing him to fall back and remain on
21 the floor. What could Mr. Pavey have done reasonably
22 under those circumstances? There's simply no evidence
23 to suggest that he could have done anything.

24 For that reason, I think, again, to allow
25 this case to go forward when the essence of

1 plaintiff's case is not what Target failed to do in
2 those few seconds that this altercation involved
3 Mr. Therrien, but truly is all of the other things
4 that they're contending should have been done before
5 that, is to allow this jury to return a verdict
6 against Target potentially not on the basis of its
7 liability for this incident, but on the basis of a
8 claim that the court has said is not legally
9 cognizable and they're not entitled to try and yet
10 they have tried anyway.

11 So for that reason, we would ask the court to
12 enter judgment for Target at this time. Thank you.

13 THE COURT: I'll take your motion under
14 advisement until nine o'clock in the morning.

15 So you'll know everything, I have an eight
16 o'clock, supposedly 15-minute appointment with the
17 dentist. As soon as I'm released, I'll be here.
18 Thank you.

19 *(The proceedings were recessed)*
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21
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23
24
25

C E R T I F I C A T E

I, Brian P. Neil, a Certified Court Reporter for the Eastern District of Oklahoma, do hereby certify that the foregoing is a true and accurate transcription of my stenographic notes and is a true record of the proceedings held in above-captioned case.

I further certify that I am not employed by or related to any party to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

In witness whereof, I have hereunto set my hand this 13th day of June 2008.

s/ Brian P. Neil

Brian P. Neil, CSR-RPR, CRR, RMR
United States Court Reporter